

Section 9.13 - Nonwaiver: Waiver by either party of strict performance of any provision of this Lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision. The Port's acceptance of a late payment or rent does not waive any preceding or subsequent default other than the failure to pay the particular sum accepted. Any waivers shall be in writing.

Section 9.14 - Modification: Any modification to this Lease shall be mutually agreed upon and reduced to writing and shall not be effective until signed by the parties hereto.

Section 9.15 - Pledge of Leasehold Interest: Lessee may from time to time pledge its leasehold interest subject to approval of the Port and the Lessee shall provide notice forthwith of such intended pledging. The term of any such pledge and loan shall not run beyond the current Lease term.

Section 9.16 - Abandonment: Upon the abandonment or vacation of the Premises by the Lessee prior to the expiration of the Lease Term without written consent of the Port, the Port may enter upon the Premises or any portion thereof and relet and otherwise exercise control over the same. For the purpose of such reletting the Port is authorized, at the cost of the Lessee, to make any repairs, changes, alterations, or additions in or to the Premises which may be necessary for the purpose of such reletting and compliance with all applicable

laws. Such entry and control shall not release the Lessee from the obligations herein, but the Lessee shall nevertheless remain liable and continue to be bound, unless the Port, at the Port's election shall cancel the Lease. Cancellation shall be effected and the Port and the Lessee released from all obligations under this Lease upon the mailing of such notice of cancellation by the Port to the Lessee at the Lessee's last known address, provided that the Lessee shall not be released from liability which survives termination of the Lease. In the event of abandonment or vacation, the title to the improvements shall automatically be vested in the Port.

Section 9.17 - Notices: All notices required under this Lease shall be deemed to be properly served if served personally or sent by certified mail to the last address previously furnished by the parties hereto or by personal delivery to a local representative of Lessee. Until hereafter changed by the parties by notice in writing, notices shall be sent to the Port at the Port of Portland, PO Box 3529, Portland, Oregon 97208, or served personally at 5555 N Channel Avenue, Building 50, Portland, Oregon 97217 and to the Lessee at 5555 N. Channel Avenue, Building 71, Portland, Oregon 97217. Date of service of such notice is date such notice is personally served or deposited in a post office of the United States Post Office Department, postage prepaid.

Section 9.18 - Partial Invalidity: If any provision of this Lease or the application thereof to any person or circumstance is at any

time or to any extent, held to be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

Section 9.19 - Survival: All agreements (including, but not limited to, indemnification agreements) set forth in this Lease, the full performance of which are not required prior to the expiration or earlier termination of this Lease, shall survive the expiration or earlier termination of this Lease and be fully enforceable thereafter.

Section 9.20 - Warranty of Authority: The individuals executing this Agreement warrant that they have full authority to execute this Lease on behalf of the entity for whom they are acting herein.

Section 9.21 - Entire Agreement: It is understood and agreed that this instrument contains the entire Agreement between the parties hereto. It is further understood and agreed by Lessee that the Port and the Port's agents have made no representations or promises with respect to this Agreement expressly set forth, and that no claim or liability or cause for termination shall be asserted by the Lessee against the Port for, and the Port shall not be liable by reason of, the breach of any representations or promises not expressly stated in this Agreement.

IN WITNESS WHEREOF, the parties hereto have subscribed their names.

LESSEE

THE PORT OF PORTLAND

By Loy Kahler

By [Signature]

President

By [Signature]

By Hilda Swenson

Asst. Secretary

APPROVED AS TO LEGAL SUFFICIENCY:

[Signature]

Counsel for Port

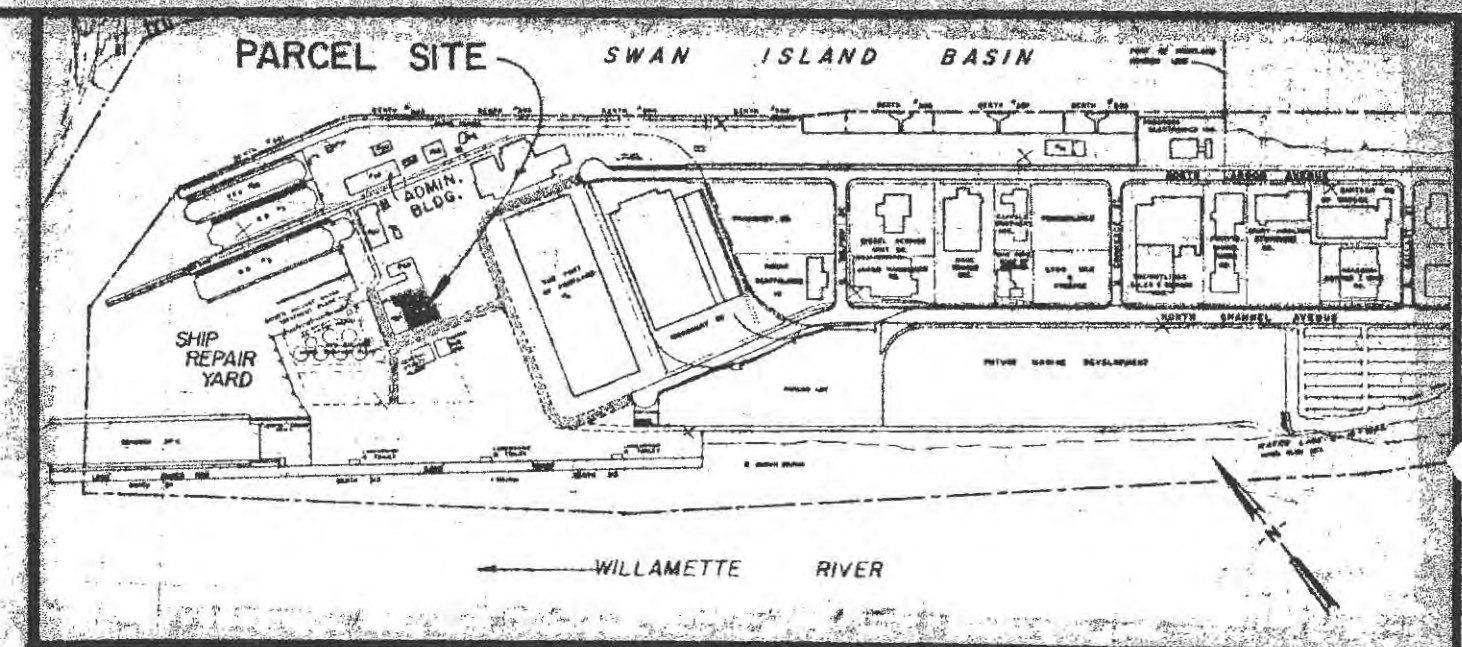
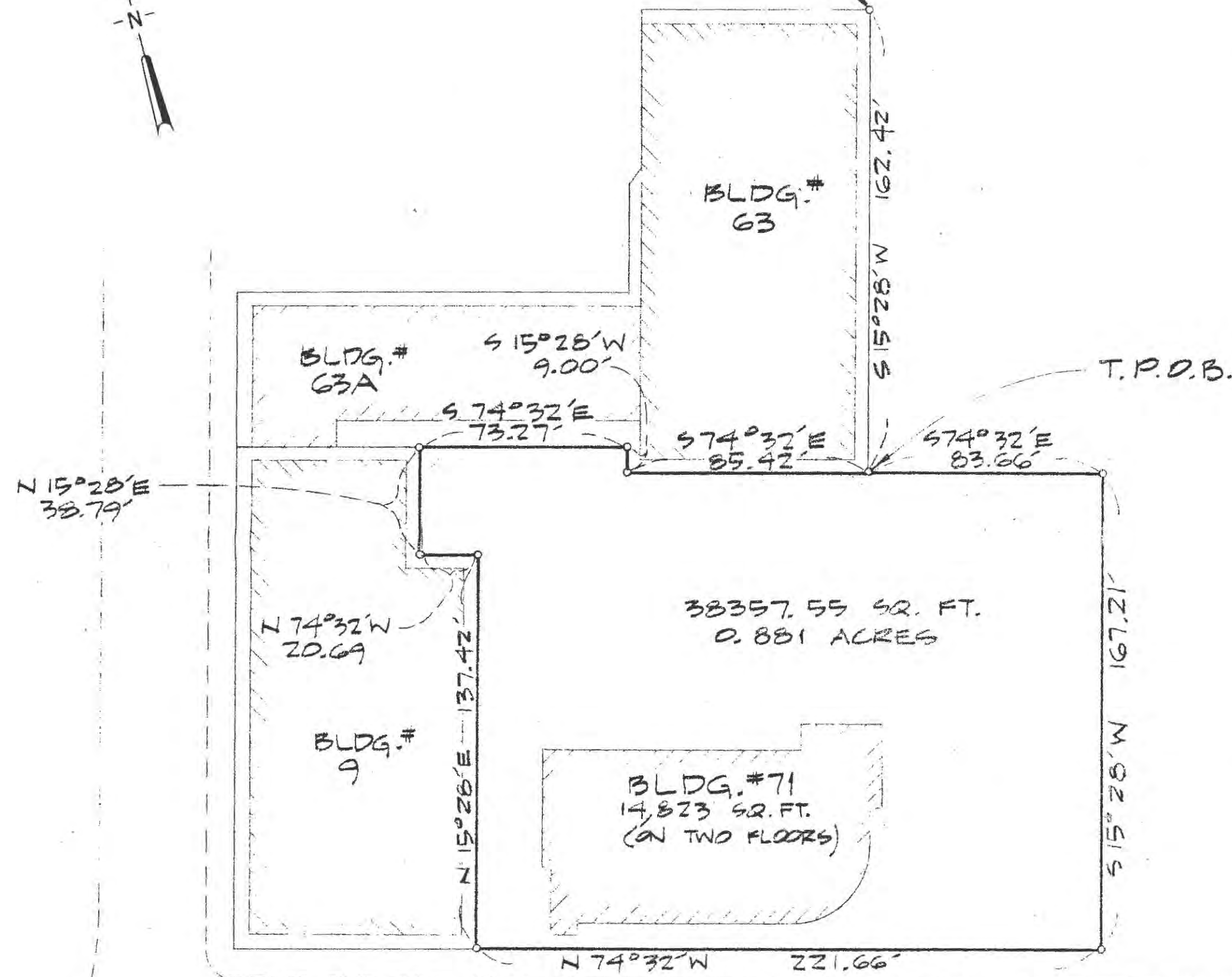
APPROVED BY COMMISSION ON:

10-11-89





P.O.B. - N 1290.00 FT. W 4670.00 FT.  
FROM S.E. COR. SECTION 17, T.1N.,  
R.1E., W.M.



VICINITY MAP  
NO SCALE

DESCRIPTION

A parcel of land located in the southwest one-quarter of Section 17, Township 1 North, Range 1 East, Willamette Meridian, Multnomah County, Oregon, described as follows:

Beginning at a point North 1,290.00 feet and West 4,670.00 feet from the southeast corner of Section 17; thence South 15° 28' 00" West 162.42 feet to the TRUE POINT OF BEGINNING; thence South 74° 32' 00" East 83.66 feet; thence South 15° 28' 00" West 167.21 feet; thence North 74° 32' 00" West 221.66 feet; thence North 15° 28' 00" East 137.42 feet; thence North 74° 32' 00" West 20.69 feet; thence North 15° 28' 00" East 38.79 feet; thence South 74° 32' 00" East 73.27 feet; thence South 15° 28' 00" West 9.00 feet; thence South 74° 32' 00" East 85.42 feet to the TRUE POINT OF BEGINNING, containing 0.881 acres.

EXHIBIT A

				REGISTERED PROFESSIONAL LAND SURVEYOR		DESIGNED BY	D. CONWELL		THE PORT OF PORTLAND PORTLAND, OREGON	
				DONALD L. CONWELL JULY 12, 1977 924		DRAWN BY	D. ADKINS		SWAN ISLAND SHIP REPAIR YARD	
						CHECKED BY	D. CONWELL		EXHIBIT PLAT	
						DATE	JUNE 1979		BUILDING #71	
						SCALE	1" = 40'			
									SUBMITTED BY	
									DRAWING NO.	
									SI 79-3 1/1	
									U.S.T. NO. 31956 MAR. TECH. SER.	

NO	DATE	BY	REVISIONS	APP'V'D
2	10-4-89	WP	DELETED DILLINGHAM MARINE & MFG. CO.	CLW
1	6-21-79		REVISE DESCRIPTION	DA MCB

BEUJING 40-520-32790

EXHIBIT B

MAINTENANCE RESPONSIBILITIES OF LESSEE AND PORT

Port - The Port shall be responsible for the following at its own cost and expense:

- o Maintenance of the exterior walls and roof areas of the building and improvements including roof drains, downspouts and window sashes.
- o Maintenance of the exterior utility systems to the service connection points inside the building and improvements.
- o Maintenance of the air conditioning units and gas furnace in Building 71.

Lessee - The Lessee shall be responsible for the following at its own cost and expense:

- o Maintenance of the interior of the building and improvements including but not limited to: water and sewer lines, plumbing fixtures, electric lines and fixtures, flooring, partitions, walls, and ceilings.
- o Maintenance of exterior doors and windows.

Any and all maintenance and repair work not specifically described herein as the responsibility of the Port shall be the responsibility of the Lessee.

MONTH-TO-MONTH

LEASE OF IMPROVED SPACE BETWEEN

THE PORT OF PORTLAND

AND

CASCADE GENERAL, INC.

BUILDING 50, BAY 3

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MONTH-TO-MONTH  
LEASE OF IMPROVED SPACE

THIS LEASE, dated this 14<sup>th</sup> day of November, 1991, is entered into by and between THE PORT OF PORTLAND, a port district of the State of Oregon (hereinafter referred to as "Port"), and Cascade General, Inc. , a corporation organized under the laws of the State of Oregon (hereinafter referred to as "Lessee"), for lease of certain described Premises located at the Portland Ship Repair Yard, Swan Island ("PSRY").

RECITALS

WHEREAS, the Port desires to lease certain land and/or improvements located at Portland Ship Repair Yard to Lessee, said land and/or improvements being more particularly described below; and

WHEREAS, Lessee is desirous of leasing said land and/or improvements;

NOW, THEREFORE, in consideration of the above declarations, the parties have negotiated the following terms and conditions:

ARTICLE I. - AGREEMENT TO LEASE, DESCRIPTION OF PREMISES

Section 1.1 - Agreement to Lease: The Port hereby leases to Lessee, and Lessee leases from the Port on the terms and conditions stated herein, the Premises consisting of Building 50, Bay 3 shown on Exhibit No. A, attached hereto and made a part hereof, and any existing Improvements



thereon, and appurtenances thereto, (hereinafter referred to as "Premises"). Upon construction or installation of any Improvements, additions, or changes to Improvements in, under, or upon the Premises (collectively "Improvements"), such Improvement(s) shall become a part of the Premises unless otherwise stated herein.

Section 1.2 - Use of Premises:

1.2.1 Lessee may use the Premises only for the following purpose(s): surface preparation of parts and equipment in support of Lessee's ship repair, ship conversion, ship building and Portland Ship Repair Yard (PSRY) industrial fabrication work. Paints, thinners or solvents may not be stored on the Premises.

1.2.2 No other use may be made of the Premises without the written approval of the Port, which shall not be unreasonably withheld. Except as a necessary and incidental use in conjunction with the use authorized for the Premises pursuant to Section 1.2.1 above, no use may be made of, on, or from the Premises relating to the handling, storage, disposal, transportation, or discharge of Hazardous Substances as defined in Section 6.3 hereof. Under no circumstances shall any use be made of, or conduct occur on, the Premises which would cause the Premises, or any part thereof, to be deemed a hazardous waste treatment, storage, or disposal facility requiring a permit, interim status, or any other special authorization under any Environmental Law as defined in Section 6.3 hereof.

1.2.3 The Port shall have the option, but shall not be required to, request the Lessee to provide the Port with a list of all materials and activities which are or foreseeably will occur on the Premises which might constitute an environmental liability. Under no circumstances shall the Port be liable for failure to request or update said list.

1.2.4 In no event shall Lessee store, handle, transport, dispose, or treat any Hazardous Substances on the Premises which are generated by or from cleanup, removal, or remediation operations or activities from third party sources outside PSRY.

1.2.5 In no event shall the Lessee ever permanently or temporarily store the following product categories on the Premises without the Port's prior written approval, except as specifically authorized by federal, state, or local Environmental Law or regulation:

1. PCBs, PCB contaminated materials, and spill residues containing PCBs.
2. Asbestos, asbestos-contaminated materials, and spill residues containing asbestos.
3. Radioactive materials (as defined by state, federal, and local regulations) including but not limited to United States Department of Transportation (US D.O.T.) classifications, and restrictions as defined in OAR Chapter 333, Division 100-005 (51) or as defined by Oregon Health Division.

4. Explosive materials and flammable solids (US D.O.T. Classification).
5. Poison Gases (Poison A, US D.O.T. classification).
6. Reactive materials (Defined by RCRA characteristic or reactivity).
7. Medical, biological, or infectious waste.

1.2.6 Lessee shall at all times exercise due care in connection with the handling of Hazardous Substances on the Premises and shall not cause or permit Hazardous Substances to be spilled, leaked, disposed of, treated, or otherwise released on the Premises.

1.2.7 Before commencing the use, generation, accumulation, storage, treatment, or other handling of Hazardous Substances on the Premises, Lessee shall provide the Port with copies of all necessary permits, authorizations and notices required by any Environmental Law as described in Section 6.3 herein, with respect to such activities. Lessee shall at all times comply with all Environmental Laws as defined in Section 6.3 herein which are applicable to the Premises or to the Lessee's activities on the Premises.

1.2.8 The Lessee shall not in any manner deface or injure the Premises or any portion thereof; or overload the floors; or permit anything to be done upon the Premises which would cause an increase in the Fire Insurance rating to the Building; or commit any nuisance in or about

the Premises; or to use or permit the use of the Premises for lodging or sleeping purposes.

Section 1.3 - Appurtenant Rights:

1.3.1 Lessee, its customers, agents, representatives, suppliers, and invitees and subcontractors authorized to be operating in the yard shall have the nonexclusive right to use the Common Areas, such right to be in common with others to whom the Port has granted or may grant such similar right. The term "Common Areas," as used herein, shall mean the roadways, pedestrian walkways, alleyways, driveways, delivery areas, trash removal areas, and any other areas, except for berth and drydock lay down areas, where such areas have been designated by the Port as areas to be used by tenants of the Port or those having Facility Agreements in common with other tenants and users of the Port.

1.3.2 The Port reserves the following rights with respect to the Common Areas:

1.3.2.1 To establish reasonable rules and regulations for the use of said Common Areas;

1.3.2.2 To use or permit the use of such Common Areas by others to whom the Port may grant or may have granted such rights in such manner as the Port may from time to time so grant;

1.3.2.3 To close all or any portion of the Common Areas to make repairs or changes, to prevent a dedication of the Common Areas or the accrual of any rights to any person or the public, or to discourage unpermitted use of the Common Areas;

1.3.2.4 To construct additional buildings to alter or remove buildings or other improvements in the Common Areas and to change the layout of such common Areas, including the right to add to or subtract from their shape and size.

1.3.2.5 To exercise any of the Port's governmental regulatory powers over the Common Areas.

## ARTICLE II. - TERM

Section 2.1 - Term: This Lease shall commence on September 1, 1991, and continue month to month until terminated by either party upon thirty days' written notice or otherwise terminated under the provisions hereof.

## ARTICLE III. - RENTAL

Section 3.1 - Basic Rent: The Lessee shall pay to the Port as rent the sum of \$750.00 per month, in advance, based upon the following: 3,000 square foot bay at \$.25 per square foot per month. Monthly utility charges will be billed in addition as shown on Exhibit B.

Section 3.2 - Time and Place of Payments: Payments are due on the first day of each month and delinquent if not paid by the (10th) day of each month. In the event the Lease commences after the first day of a month, the Basic Rent for the first month shall be prorated based on the number of days in the first partial calendar month.

3.2.1 Payment shall be to the Port at The Port of Portland, Post Office Box 5095, Portland, Oregon 97208, or such other place as the Port may designate. All amounts not paid by the Lessee when due shall bear a delinquency charge at the rate of 18% per annum. The delinquency charge on overdue accounts is subject to periodic adjustment to reflect the Port's then current charge for overdue accounts.

Section 3.3 - Acceptance of Late Rent: The Port shall be entitled, at its sole and complete discretion, to either accept or reject a tender payment of Basic Rent or Additional Rent which is not paid when due. In the event the Port elects to accept a tender of payment of rent after the time when such payment was due, the Port may do so without thereby waiving any default based upon the failure of Lessee to make such payment when due and without waiving Lessee's continuing obligation to make such payments when required under the terms of this Lease. Lessee hereby acknowledges that this constitutes a waiver by Lessee of any argument that by accepting a late payment of rent, the Port has waived any default which is based upon such late payment or has waived Lessee's continuing obligation to make such payments when and as required by the terms of this Lease.

#### ARTICLE IV. - LESSEE'S OTHER OBLIGATIONS

Section 4.1 - Construction of Improvements/Alterations: The Lessee shall make no construction, alteration, or changes on or to the Premises without the prior written consent of the Port, which consent shall not be unreasonably withheld. At least thirty days prior to any approved



construction, alteration, or changes upon the Premises or Improvements, Lessee shall submit to the Port architectural and mechanical final plans and specifications, site-use plan, and architectural rendering thereof and shall not commence any construction until it has received the Port's written approval. All plans for construction, alteration, or changes shall be signed by an architect or engineer licensed in the State of Oregon. Should the Port fail to take action concerning the plans and/or specifications submitted to it within thirty days, said plans and/or specifications shall be deemed approved.

4.1.1 No such work shall be undertaken until Lessee has procured and paid for, so far as the same may be required from time to time, all municipal and other governmental permits and authorizations required with respect to the work. Procurement of such permits and authorizations shall be subsequent to Lessee's obtaining Port approval pursuant to Section 4.1.

4.1.2 All work shall be performed in a good and workmanlike manner and, in the case of alterations or additions to existing Improvements, shall be of such quality and type that, when completed, the value and utility of the Improvements which were changed or altered shall be not less than the value and utility of such Improvements immediately before such change or alteration. All work shall be prosecuted with reasonable dispatch.

4.1.3 Thirty days after the completion of any work under this Section 4.1, Lessee shall deliver to the Port complete and fully detailed "AS-BUILT" drawings of the completed Improvements prepared by an architect

licensed in the State of Oregon.

Section 4.2 - Maintenance: Except for the Port maintenance responsibilities provided in Section 5.1 herein, the Lessee shall keep and maintain the Premises and Improvements of any kind, which may be erected, installed, or made thereon by the Lessee or the Port, in good and substantial repair and condition and shall promptly make all necessary repairs thereto at Lessee's sole expense. Lessee shall be responsible at its own cost and expense for the maintenance of the interior of the Premises and Improvements including, but not limited to, water and sewer lines, plumbing fixtures, electric lines and fixtures, flooring, partitions, walls, ceilings, exterior doors and windows of the Premises. Lessee shall also be responsible for maintenance of the system maintenance and upkeep to the Port-owned sandblast and paint booth and equipment located on the premises and will return the equipment to the Port upon termination of this Lease in good running order, reasonable wear and tear excepted. The Lessee shall provide at, the Lessee's expense, proper containers and removal service for trash and garbage and shall keep the Premises free and clear of rubbish, debris, and litter at all times.

Section 4.3 - Taxes: Unless exempt, the Lessee agrees to pay all lawful taxes and assessments which during the term hereof or any extension may become a lien or which may be levied by the state, county, city, or any other tax-levying body upon the Premises or Improvements, upon any taxable interest by Lessee acquired in this Lease, or any taxable possessory right which Lessee may have in or to the Premises or the Improvements thereon by reason of its occupancy thereof, as well as all taxes on all taxable property, real or personal, owned by the Lessee in or

CG-B50 9

about said Premises. Upon making such payments, the Lessee shall give to the Port a copy of the receipts and vouchers showing such payment. The Lessee understands that Port property is exempt from property taxation until leased to a taxable entity. In the event the term of this Lease or any extension thereof shall end after June 30 of any year, the Lessee shall be responsible for payment of property taxes for the entire tax year without proration or, in the event of any change in property tax law, for any taxes due under such law.

Section 4.4 - Liens: The Lessee agrees to pay, when due, all sums of money that may become due for, any labor, services, materials, supplies, utilities, furnishings, machinery, or equipment which have been furnished or ordered with the Lessee's consent to be furnished to or for the Lessee in, upon, or about the Premises or Improvements, which may be secured by any mechanic's, materialsmen's, or other lien against the Premises or Improvements or the Port's interest therein, and will cause each such lien to be fully discharged and released at the time the performance of any obligation secured by any such lien matures or becomes due, provided that the Lessee may in good faith contest any mechanic's or other liens filed or established, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest, provided that the Port may require the Lessee to procure a payment bond in the amount of the contested lien.

Section 4.5 - Utilities: The Lessee shall promptly pay any charges for telephone, and all other charges for utilities which may be furnished to the Premises or Improvements at the request of or for the benefit of Lessee, except for electricity, water and sewer, compressed air, and steam heat which shall be provided by the Port. The applicable rates for the utilities provided by the Port are shown on Exhibit B, attached hereto. In no event shall the Lessee overload the electrical circuits from which the Lessee obtains current.

Section 4.6 - Advertisement Signs: Subject to the provisions hereof, the Lessee shall have the right to install or cause to be installed appropriate signs on the Premises to advertise the nature of its business. The cost for installation and operation of such signs shall be borne by the Lessee. The Lessee shall not erect, install, nor permit to be erected, installed or operated upon the Premises herein any sign or other advertising device without having first obtained the Port's written consent thereto as to size, construction, location, and general appearance. All such installations shall be in accordance with the Portland Ship Repair Yard Signing Standards as adopted by the Port from time to time.

Section 4.7 - Safety Requirements:

4.7.1 The Lessee shall conduct its operations, activities and duties under this Lease in a safe manner, and shall comply with all safety standards imposed by applicable federal, state and local laws and regulations. The Lessee shall require the observance of the foregoing by

all subcontractors and all other persons transacting business with or for the Lessee in any way connected with the conduct of the Lessee pursuant to this Lease.

4.7.2 The Lessee shall exercise due and reasonable care and caution to prevent and control fire on the Premises and to that end shall provide and maintain such fire suppression and other fire protection equipment as may be required pursuant to applicable governmental laws, ordinances, statutes and codes for the purpose of protecting the Improvements adequately and restricting the spread of any fire from the Premises to any property adjacent to the Premises.

Section 4.8 - Access to Premises: Except as provided in Section 4.8.1, the Port shall at all times during ordinary business hours have the right to enter upon the Premises and Improvements for the purposes of: (1) inspecting the same; (2) confirming the performance by Lessee of its obligations under this Lease; (3) doing any other act which the Port may be obligated or have the right to perform under this Lease, or reasonably related thereto; and (4) for any other lawful purpose. Such inspections shall be made only at a mutually agreeable time to all parties except in cases of emergency or pursuant to Section 4.8.1.

4.8.1 Environmental Inspection: The Port reserves the right to inspect the Lessee's and Lessee's subtenants' management of Hazardous Substances, as defined in Section 6.3, on the Premises at any time and from time to time without notice to the Lessee or subtenant. If the Port at any time during the term of this Lease or any extension thereof



reasonably believes that the Lessee or Lessee's subtenant(s) are managing Hazardous Substances in a manner that may allow contamination of any portion of the Premises, the Port may require the Lessee to furnish to the Port, at the Lessee's sole expense, an environmental audit or an environmental assessment with respect to the matters of concern to the Port. The Port shall have the right to approve the company or individual conducting said audit and the audit procedures, which approval shall not be unreasonably withheld, and shall be given an original copy of the results. Lessee shall cooperate with all such requests.

Section 4.9 - Hazardous Substances Spills and Releases: Lessee shall immediately notify the Port upon becoming aware of: (1) any leak, spill, release or disposal of a Hazardous Substance, as defined in Section 6.3, on, under or adjacent to the Premises or threat of or reasonable suspicion of any of the same; and/or (2) any notice or communication from a governmental agency or any other person directed to the Lessee or any other person relating to such Hazardous Substances on, under, or adjacent to the Premises or any violation of any federal, state, or local laws, regulations, or ordinances with respect to the Premises or activities on the Premises.

4.9.1 In the event of a leak, spill or release of a Hazardous Substance on the Premises or the threat of or reasonable suspicion of the same, Lessee shall immediately undertake all emergency response necessary to contain, clean up and remove the Hazardous Substance and shall undertake within a reasonable time all investigatory, remedial and/or



removal action necessary or appropriate to ensure that any contamination by the Hazardous Substances is eliminated. The Port shall have the right to approve all investigatory, remedial and removal procedures and the company(ies) and/or individual(s) conducting said procedures, such approval shall not be unreasonably withheld. Within 30 days following completion of such investigatory, remedial and/or removal action, Lessee shall provide the Port with a certification acceptable to the Port that all such contamination has been eliminated as required by federal, state, or local law or regulation.

#### ARTICLE V. - PORT OBLIGATIONS AND WARRANTIES

Section 5.1 - Maintenance: Except for Lessee's maintenance obligations as described in Section 4.2 and Lessee's obligations to repair damage caused by its acts or failure to act on the Premises, the Port shall be responsible for maintenance of the exterior walls and roof areas of the Premises, and maintenance of the exterior utility systems to the service connection points inside the Premises. Any and all maintenance and repair work not specifically described herein as the responsibility of the Port shall be the responsibility of the Lessee.

#### Section 5.2 - Delivery:

5.2.1 Lessee shall have the right to possession of the Premises as of the date of the term hereof. Should the Port be unable to deliver possession of the Premises on the date fixed for commencement of the term, the Lessee shall owe no rent until notice from the Port tendering

possession to the Lessee. The Port shall have no liability to the Lessee for delay in delivering possession, nor shall such delay extend the term of this Lease in any manner.

5.2.2 In the event the Port shall permit the Lessee to occupy the Premises prior to the occupancy date herein set forth, such occupancy shall be subject to all the provisions of this Lease.

Section 5.3 - Port's Warranty of Ownership: The Port warrants that it is the owner of the land and building and has the right to lease said Premises under the terms of this Lease. Subject to the Lessee performing all obligations of this Lease, the Lessee's possession of the Premises will not be disturbed by the Port or anyone lawfully claiming by, through or under the Port and the Port will defend the Lessee's right to quiet enjoyment of the Premises from disturbance by anyone lawfully claiming by, through or under the Port.

Section 5.4 - Condition of Premises: The Port makes no warranties or representations regarding the condition or available lawful uses of the Premises. The Lessee has inspected and accepts the Premises in an "as is" condition upon taking possession, and the Port shall have no liability to the Lessee for any loss, damage, injury, or costs caused by the condition or available lawful uses of the Premises.

the Port, and which: (1) arise from or are in any way connected with Lessee's use, occupation, management or control of the Premises and whether or not occurring on the Premises; or (2) result from any breach, violation, or nonperformance by Lessee of any of its obligations under this Lease.

Section 6.3 - Hazardous Substances Indemnity: In addition to the indemnity provided in Section 6.2 above, Lessee agrees to indemnify, save, and hold harmless the Port from and against all removal, remediation, containment and other costs required to be incurred by environmental laws caused by, arising out of, or in connection with, the handling, storage, discharge, transportation, or disposal of Hazardous Substances which Hazardous Substances are on the Premises as a result of Lessee's, or Lessee's sublessees', agents', employees', or invitees', acts or omissions, whether occurring during the term of this Lease. Subject to the preceding limitations, such Costs shall include, but not be limited to: (a) claims of third parties, including governmental agencies, for damages, response costs or other relief; (b) the cost, expense or loss to the Port of any injunctive relief, including preliminary or temporary injunctive relief, applicable to the Port or the Premises; (c) the expense, including reasonable fees of attorneys, engineers, paralegals and experts, reporting the existence of said Hazardous Substances or contaminants to any agency of the State of Oregon or the United States as required by applicable Environmental Laws; (d) any and all expenses or

obligations, including attorneys' and paralegal fees, incurred at, before, and after any trial or appeal therefrom or any administrative proceeding or appeal therefrom whether or not taxable as costs, including, without limitation, reasonable attorneys' and paralegal fees, witness fees (expert and otherwise), deposition costs, copying and telephone charges and other expenses, all of which shall be paid by Lessee promptly after the Port incurs the obligations to pay such amounts. Such damages, costs, liabilities and expenses shall include such as are claimed to be owed by any regulating and administering agency. As used in Article VI, the word "Premises" shall be deemed to include the soil and water table thereof. As used herein, "Hazardous Substances" shall be interpreted in the broadest sense to include any substances, materials, wastes, pollutants, or contaminants that, because of their quantity, concentration, or physical, chemical, or infectious characteristics, may cause or threaten a present or potential hazard to human health or the environment when improperly generated, used, stored, handled, treated, discharged, disposed of, or released, and which are regulated by environmental laws. "Hazardous Substances" shall include but not be limited to any and all substances, materials, wastes, pollutants, or contaminants are defined or designated as hazardous, toxic, radioactive, dangerous, or any other similar term in or under any of the Environmental Laws, and shall specifically include asbestos and asbestos-containing materials, petroleum or petroleum products, including crude oil or any fraction thereof, and urea formaldehyde. As used herein, "Environmental Laws" shall be interpreted in the broadest sense to include any and all lawful federal, state, and local statutes, regulations, rules, and ordinances now

or hereafter in effect, as may be amended from time to time, governing Hazardous Substances or relating to the protection of human health or the environment, including but not limited to, the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. §6901 et. seq.); the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 U.S.C. §9601, et. seq.); the Federal Water Pollution Control Act/Clean Water Act (33 U.S.C. §1257 et. seq.); the Toxic Substances Control Act (15 U.S.C. §2601, et. seq.); Superfund Amendment and Reauthorization Act of 1986 (SARA) (P.L. 99-499. October 17, 1986); the Safe Drinking Water Act (42 U.S.C. 300 et. seq.); the Solid Waste Disposal Act (42 U.S.C. §3251, et. seq.); the Clean Water Act (33 U.S.C. §1251, et. seq.); the Clean Air Act (42 U.S.C. §7401 et. seq.); the Formal Fungicide and Rodenticide Act/Pesticide Act (7 U.S.C. §13 et. seq.); the Oregon Revised Statutes relating to community information on hazardous waste reduction (ORS 453.307 et seq.); toxics use reduction and hazardous waste reduction (ORS 465.003 et. seq.); environmental cleanup of hazardous substances, hazardous wastes, and oil contamination (ORS 465.200 et. seq.); treatment, storage, and disposal of hazardous waste and PCBs (ORS 266.005 et. seq.); notice of environmental hazards (ORS 466.360 et. seq.); use of PCBs (ORS 466.505 et. seq.); spill response and cleanup of hazardous materials and oil (ORS 466.605 et. seq.); underground storage tanks (ORS 466.705 et. seq.); penalties for noncompliance (ORS 466.880 et. seq.); water pollution control (ORS 468.691 et. seq.); oil spills (ORS 466.880 et. seq.); asbestos abatement (ORS 468.875 et. seq.); any similar or equivalent laws; and any implementing laws, regulations, rules, and ordinances.



6.3.1 Promptly upon written notice from the Port or from any governmental entity, if required by the environmental laws, the Lessee shall remove from the Premises (including without limitation the soil or water table thereof) all Hazardous Substances placed on the Premises by Lessee, Lessee's sublessees, agents, employees or invitees and shall restore the Premises to clean, safe, good, and serviceable condition. Any such cleanup shall be in conformance with all applicable governmental rules and regulations.

Section 6.4 - Duty to Defend: Lessee shall, at its sole expense, defend any and all actions, suits, and proceedings relating to matters covered by the indemnity set forth in Sections 6.2 and 6.3 which may be brought against the Port or in which the Port may be impleaded, and shall satisfy, pay, and discharge any and all judgments, orders, and decrees that may be entered against the Port in any such action or proceeding.

Section 6.5 - Insurance:

6.5.1 The Lessee shall maintain an occurrence form commercial general and automobile liability insurance policy or policies including a fire legal liability endorsement for the protection of Lessee and the Port, its commissioners, directors, officers, servants, and employees, insuring the Lessee and the Port against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and occurring on or in any way related to the Premises or occasioned by reason of the operations of the Lessee on or



from the Premises with insurance of not less than (\$5,000,000) combined single limit.

6.5.2 Lessee shall maintain in force Workers' Compensation insurance, including coverage for Employer's Liability and, if applicable, The Longshoremen's and Harbor Workers' Compensation Act.

6.5.3 All insurance shall name the Port, its commissioners, officers, and employees as additional insureds with the stipulation that this insurance, as to the interest of the Port only therein, shall not be invalidated by any act or neglect or breach of contract by the Lessee.

6.5.4 The Lessee shall furnish to the Port a certificate(s) of insurance evidencing the date, amount, and type of insurance that has been procured pursuant to this Lease. All policies of insurance shall remain in full force during the term hereof and shall provide for not less than 30 (thirty) days written notice to the Port and the Lessee before such policies may be revised, nonrenewed, or cancelled. Upon request, the Lessee shall provide the Port with a copy or copies of any insurance policy provided pursuant to this Lease.

6.5.5 The Port shall have the right to review the coverage and limits of insurance required herein from time to time. In the event the Port reasonably determines that such limits should be modified, the Port will provide 30 days notice to the Lessee of such determination and the Lessee shall, if the coverage is expanded and/or limits are increased, modify its coverage to comply with the new limits and provide the Port with an updated certificate.

Section 6.6 - Waiver of Subrogation: The Port and the Lessee agree that each forfeits any right of action that it may later acquire against the other of the parties to the Lease for loss or damage to its property, or to property in which it may have an interest, to the extent that such loss is covered by the provision of the Lessee's property damage policy or policies.

#### ARTICLE VII. - TERMINATION

Section 7.1 - Termination by the Port: The Port shall be entitled to terminate this Lease as provided herein and as otherwise provided by law.

Section 7.2 - Termination by Lessee: The Lessee shall be entitled to terminate this Lease as provided herein and as otherwise provided by law.

Section 7.3 - Duties on Termination: Upon termination of the Lease for any reason, the Lessee shall deliver all keys to the Port and surrender the Premises and Improvements in good condition. Alterations including but not limited to electrical systems, constructed by the Lessee with permission from the Port shall not be removed, unless the terms of permission for the alteration so require, but shall be restored to the original condition. Depreciation and wear from ordinary use for the purpose for which the Premises were let need not be restored, but all repair for which the Lessee is responsible shall be completed to the latest practical date prior to such surrender.

Section 7.4 - Title to Improvements: Subject to the provisions of Section 7.5, upon termination of this Lease by the passage of time or for any reason, the Port shall have the option to either require removal of any or all Improvements constructed by the Lessee, pursuant to Section 4.1, within 90 days after the expiration of the Lease at the Lessee's expense or shall have the option to take title to any or all such structures, installations, and Improvements.

Section 7.5 - Fixtures:

7.5.1 With the exception of the sandblast and paint booth and equipment located in the Premises which is owned by the Port, upon termination of this Lease for any reason, any or all fixtures placed upon the Premises during the Lease Term other than the Lessee's trade fixtures, shall, at the Port's option, become the property of the Port. Movable furniture, decorations, floor covering (other than hard surface bonded or adhesively fixed flooring), curtains, blinds, furnishings, equipment, and trade fixtures shall remain the property of the Lessee if placed on the Premises by the Lessee. At or before the termination of this Lease, Lessee, at its expense, shall remove from the Premises any or all of Lessee's fixtures or personal property which the Port has required Lessee to remove under the terms of this Lease, and shall repair any damage to the Premises resulting from the installation or removal of such fixtures or personal property. Any items of Lessee's fixtures or personal property which remain on the Premises after the termination of this Lease in violation of this Section 7.5 may, at the option of the Port, be deemed abandoned. The Port shall have the option, in its sole discretion, of (a) retaining any or all of such abandoned property without any requirement to

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account to Lessee therefor, or (b) removing and disposing of any or all of such abandoned property and recovering the cost thereof, plus interest from the date of expenditure at the Port's then current interest rate, from Lessee upon demand.

7.5.2 The time for removal of any property or fixtures which the Lessee is required to remove from the Premises upon termination shall be as follows: (1) on or before the date the Lease terminates as provided herein; or (2) within 30 days after notice from the Port requiring such removal where the property to be removed is a fixture which the Lessee is not required to remove except after such notice by the Port, and such date would fall after the date on which the Lessee would be required to remove other property.

Section 7.6 - Environmental Audit: The Port may, at or near the expiration of this Lease by time or other termination require the Lessee to conduct, at its cost, an environmental audit of the Premises acceptable to the Port to determine if any environmental contamination as defined by then-applicable Environmental Law exists on the Premises. The audit shall follow the general procedures outlined in Exhibit C attached hereto. The Port shall have the right to approve the audit procedures and the company or individual conducting said audit and shall be given an original copy of the results. Lessee shall provide to the Port a supplemental update report as of the last day of the Lease Term. The Lessee shall promptly remedy any contamination revealed by such audit in accordance with, and to the extent required by, the then applicable Environmental Law prior to the

expiration of the Lease Term. Lessee, upon termination of the Lease for any reason other than expiration of time, shall conduct the environmental audit as required by this Section. The Port, if necessary, will grant Lessee a Permit of Entry for such purpose. In the event the Lessee fails to promptly remedy the contamination, the Port shall have the right to remedy such contamination and charge the Lessee all such costs. The Lessee agrees to pay to Port such costs within 30 days after receipt of invoice from the Port, such right to be in addition to any other remedy available to the Port as provided herein, at law, or by equity.

7.6.1 If the Lessee does not conduct said audit as required herein, the Port may, at its sole option, complete said audit at the Lessee's expense. Until said audit and any remedial actions as required to restore the Premises to an acceptable condition are completed, the Lessee shall not be released from any liability for such costs.

#### ARTICLE VIII. - DEFAULT

Section 8.1 - Events of Default: The following shall be events of default:

8.1.1 Default in Rent: Failure of the Lessee to pay any rent or other charge as provided herein within 10 days after it is due.

8.1.2 Default in Other Covenants: Failure of the Lessee to comply with any term or condition or fulfill any obligation of the Lease (other than the payment of rent or other charges) within 30 days after written notice by the Port specifying the nature of the default with reasonable particularity. If the default is of such a nature that it



cannot be completely remedied within the 30 day period, this provision shall be complied with if the Lessee begins correction of the default within the 30 day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

8.1.3 Insolvency: To the extent permitted by the United States Bankruptcy Code, insolvency of the Lessee; an assignment by the Lessee for the benefit of creditors; the filing by the Lessee of a voluntary petition in bankruptcy; an adjudication that the Lessee is bankrupt or the appointment of a receiver of the properties of the Lessee and the receiver is not discharged within 30 days; the filing of an involuntary petition of bankruptcy and failure of the Lessee to secure a dismissal of the petition within 30 (thirty) days after filing; attachment of or the levying of execution on the leasehold interest and failure of the Lessee to secure discharge of the attachment or release of the levy of execution within 10 days.

Section 8.2 - Remedies on Default:

8.2.1 In the event of a default under the provisions of Section 8.1, the Port at its option may terminate the Lease and at any time may exercise any other remedies available under law or equity for such default. Any notice to terminate may be given before or within the grace period for default and may be included in a notice of failure of compliance. No termination of this Lease pursuant to this Section 8.2 shall relieve Lessee of its liabilities and obligations under this Lease, and any damages shall survive any such termination.

8.2.2 If Lessee fails to perform any of its obligations under this Lease, the Port, without waiving any other remedies for such failure, may (but shall not be obligated to) perform such obligation for the account and at the expense of the Lessee, without notice in a case of emergency, and in any other case if such failure continues for 15 days after written notice from the Port specifying the nature of the failure. As used herein, "emergency" shall mean any activity, cause or effect under the control or direction of the Lessee, its employees, agents, invitees, guests, or subcontractors involving the health, safety or general welfare of persons or property. The Port shall not be liable to Lessee for any claim for damage resulting from any such action by the Port. Lessee agrees to reimburse the Port upon demand for any expenses incurred by Lessor pursuant to this Lease together with interest thereon from the date of payment at the Port's then current interest rate.

8.2.3 Suit(s) or action(s) for the recovery of the rents and other amounts and damages, or for the recovery of possession may be brought by landlord, from time to time, at landlord's election, and nothing in this Lease will be deemed to require landlord to await the date on which the Lease Term expires. Each right and remedy in this Lease will be cumulative and will be in addition to every other right or remedy in this Lease or existing at law or in equity or by statute or otherwise, including, without limitation, suits for injunctive relief and specific performance. The exercise or beginning of the exercise by landlord of any such rights or remedies will not preclude the simultaneous or later exercise by landlord of any other such rights or remedies. All such rights and remedies are nonexclusive.

## ARTICLE IX. - GENERAL PROVISIONS

### Section 9.1 - Assignment and Sublease:

9.1.1 This Lease is personal to the Lessor and the Lessee. Except as provided herein, no part of the Premises nor any interest in this Lease may be assigned, mortgaged, or subleased, nor may a right of use of any portion of the Premises be conveyed or conferred on any third person by any other means, without the prior written consent of the Port, which shall not be unreasonably withheld. Any assignment or attempted assignment without the Port's prior written consent shall be void. This provision shall apply to all transfers by operation of law.

9.1.2 Consent in one instance shall not prevent this provision from applying to a subsequent instance.

9.1.3 Other than the subleases for which the Port has given written consent concurrently with this Lease, in determining whether to consent to sublease, the Port may consider any factor, including the following factors: financial ability; business experience; intended use.

Section 9.2 - Nonwaiver: Waiver by either party of strict performance of any provision of this Lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision. All waivers shall be in writing. The Port's acceptance of a late payment of rent does not waive any preceding or subsequent default other than the failure to pay the particular sum accepted.

Section 9.3 - Attorney's Fees: If suit or action is instituted in connection with any controversy arising out of this Lease, the prevailing party shall be entitled to recover in addition to costs such sum as the court may adjudge reasonable as attorney fees, or in the event of appeal as allowed by the appellate court.

Section 9.4 - Law of Oregon: This Lease shall be governed by the laws of the State of Oregon. If a court of competent jurisdiction declares this Lease to be a public contract under ORS Chapter 279, then the parties agree that the contract provisions required by ORS Chapter 279 to be included in public contracts are hereby incorporated by reference and shall become a part of this Lease as if fully set forth herein.

Section 9.5 - Adherence to Law: The Lessee shall adhere to all applicable Federal, State, and local laws, rules, regulations, and ordinances, including but not limited to (1) laws governing its relationship with its employees, including but not limited to laws, rules, regulations, and policies concerning Worker's Compensation, and minimum and prevailing wage requirements; (2) laws, rules, regulations and policies relative to occupational safety and health, (3) all federal, state, regional and local laws, regulations and ordinances protecting the environment, and (4) all laws and regulations regarding the handling and disposal of Hazardous Substances.

9.5.1 Lessee shall not use or allow the use of the Premises or any part thereof for any unlawful purpose or in violation of any certificate

of occupancy, any certificate of compliance, or of any other certificate, law, statute, ordinance, or regulation covering or affecting the use of the Premises or any part thereof. Lessee shall not permit any act to be done or any condition to exist on the Premises or any part thereof which may be hazardous, which may constitute a nuisance, or which may void or make voidable any policy of insurance in force with respect to the Premises.

9.5.2 The Lessee shall promptly provide to the Port copies of all notices or other communications between the Lessee and any governmental entity which relate to the Lessee's noncompliance or alleged noncompliance with any law, ordinance, regulation, condition, or other applicable requirement lawfully imposed by any agency, governmental body, or quasi-governmental body having jurisdiction over the Lessee's use of the Premises.

9.5.3 Lessee shall obtain, and promptly advise the Port of receipt of all federal, state, or local governmental approvals or permits required by law or regulation for any activity or construction that Lessee may undertake on the Premises. Lessee shall provide the Port with copies of all such approvals and permits received by Lessee.

Section 9.6 - Time of Essence: Time is of the essence of each and every covenant and condition of this Lease.

Section 9.7 - Warranty of Authority: The individuals executing this agreement warrant that they have full authority to execute this Lease on behalf of the entity for whom they are acting herein.



Section 9.8 - Headings: The article and section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provisions of this Lease.

Section 9.9 - Consent of Port:

9.9.1 Subject to the provisions of Section 9.1, whenever consent, approval or direction by the Port is required under the terms contained herein, it shall not be unreasonably withheld or delayed and all such consent, approval, or direction shall be received in writing from an authorized representative of The Port of Portland.

Section 9.10 - Notices: All notices required under this Lease shall be deemed to be properly served if served personally or sent by certified mail to the last address previously furnished by the parties hereto. Until hereafter changed by the parties by notice in writing, notices shall be sent to the Port at The Port of Portland, Post Office Box 3529, Portland, Oregon 97208, or served personally at 5555 N. Channel Ave., Bldg. 50, Portland, Oregon, 97217, and to the Lessee at 5555 N. Channel Ave., Building 71, Portland, Oregon 97217. Date of Service of such notice is date such notice is personally served or deposited in a post office of the United States Post Office Department, postage prepaid.

Section 9.11 - Modification: Any modification of the Lease shall be mutually agreed upon and reduced to writing and shall not be effective until signed by the parties hereto.

Section 9.12 - No Benefit to Third Parties: The Port and the Lessee are the only parties to this Lease and as such are the only parties entitled to enforce its terms. Nothing in this Lease gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.

Section 9.13 - Admittance: The Port shall not be liable for the consequences of admitting by pass-key or refusing to admit to said Premises the Lessee or any of the Lessee's agents or employees or other persons claiming the right of admittance.

Section 9.14 - Regulations: The Port may, from time to time, adopt and enforce reasonable rules and regulations with respect to the use of said Premises, and Lessee agrees to observe and obey such rules and regulations.

Section 9.15 - Partial Invalidity: If any provision of this Lease or the application thereof to any person or circumstance is at any time or to any extent, held to be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

Section 9.16 - Survival: All agreements (including, but not limited to, indemnification agreements) set forth in this Lease, the full performance of which are not required prior to the expiration or earlier termination of this Lease, shall survive the expiration or earlier termination of this Lease and be fully enforceable thereafter.

Section 9.17 - Entire Agreement: It is understood and agreed that this instrument contains the entire Agreement between the parties hereto. It is further understood and agreed by the Lessee that the Port and the Port's agents have made no representations or promises with respect to this Agreement or the making or entry into this Agreement, except as in this Agreement expressly set forth, and that no claim or liability or cause for termination shall be asserted by the lessee against the Port for, and the Port shall not be liable by reason of, the breach of any representations or promises not expressly stated in this Agreement, any other oral agreement with the Port being expressly waived by the Lessee.

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IN WITNESS WHEREOF, the parties hereto have subscribed their names.

LESSEE

BY *Ernest Drowley*

BY *Loy Kahler*

THE PORT OF PORTLAND

BY *W. H. Thorne*  
EXECUTIVE DIRECTOR

By \_\_\_\_\_

APPROVED AS TO LEGAL SUFFICIENCY

*Paul C. Elmer*  
Counsel for The Port of Portland

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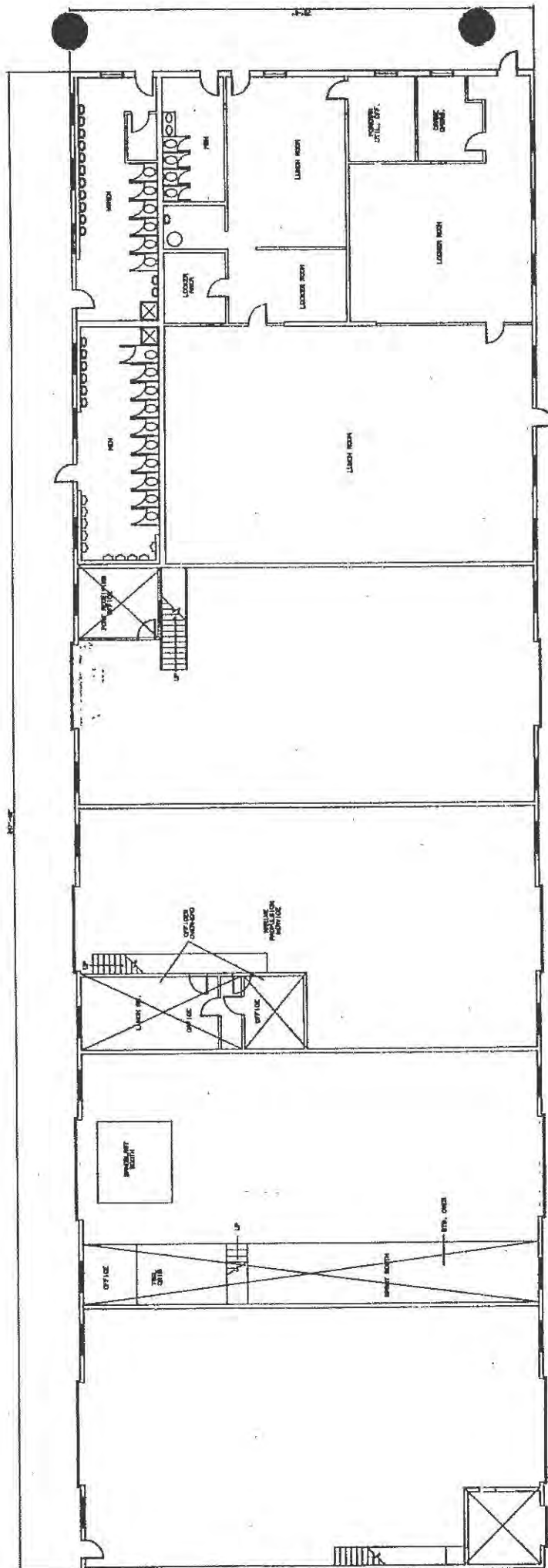


EXHIBIT A  
 Portland Ship Repair Yard  
 BUILDING NO. 50  
 SHOPS



EXHIBIT B

FOR UTILITY SERVICES BUILDING AREAS

This disclosure statement is part of the lease dated \_\_\_\_\_, 1991, between the PORT OF PORTLAND and CASCADE GENERAL, INC. for the rental of the improved space identified in Attachment A. For the authorized purpose of the above lease, the following utilities shall be provided at the stated rates subject to change upon thirty days written notice by the Port.

<u>Space</u>	<u>Monthly Amount</u>	<u>Utilities Provided</u>
Building 50, Bay 3	\$200.00	steam heat water & sewer compressed air

Plus electricity metered at \$0.10/kwh

Telephone service, refuse collection, and janitorial services are the responsibility of the Lessee.

ACKNOWLEDGED: Ernest Browley 11-12-91  
Lessee's signature Date

EXHIBIT C  
ENVIRONMENTAL SURVEY

The following sets of activities are to be included in a comprehensive review of the conditions and operations conducted at a subject property to determine areas of environmental concern.

Phase 1 - SITE CHARACTERIZATION

The purpose of this Phase is to identify potential areas of environmental concern. This is to be accomplished through the following tasks.

- 1) Regulatory File Review, including, but not limited to:
  - o Department of Environmental Quality (DEQ)
  - o Environmental Protection Agency (EPA)
  - o Oregon State Fire Marshal (OSFM)
- 2) On-Site Reconnaissance to establish current conditions and determine the need for additional sampling, including, but not limited to:
  - o Hazardous materials/waste management areas
  - o General Facility maintenance/housekeeping
  - o Air pollution sources and control equipment
  - o Water pollution sources and control equipment
  - o Solid waste management areas
  - o Electrical and hydraulic equipment
  - o Underground storage tanks
  - o Presence of asbestos containing materials
- 3) Sampling in areas which exhibit the possibility of soil and/or groundwater contamination. This would also include sampling to establish background levels for reference purposes. This portion of the investigation may be deferred until Phase 2, if the findings of activities 1) and 2) above indicate a high likelihood of contamination of soil and/or groundwater.
- 4) Reporting, including documentation of all information, evidence, and results developed during the Site Characterization activities 2), and 3) above. The report will also include recommendations for future actions or further work needed.

## ENVIRONMENTAL SURVEY

(Continued)

### Phase 2 - SITE INVESTIGATION

If the results of the Phase 1, Site Characterization indicate the likelihood of environmental contamination at or from the site, additional work may be recommended. The purpose of the Phase 2, Site Investigation is to quantify the concerns identified in Phase 1. This can be accomplished through sampling for physical and chemical analyses to determine the extent and level of contamination. During this phase, environmental impacts and financial exposure risks may also be evaluated. The results of the Phase 2, Site Investigation will be used for development of recommendations for additional work, if necessary.

### Phase 3 - SITE REMEDIATION

If the outcome of the Phase 2, Site Investigation indicates that contamination of the site requires remedial action, Phase 3 would be implemented. The tasks associated with this Phase would include, but not be limited to, removal of hazardous materials or waste on the site, addressing site contamination through various engineering/treatment options, monitoring, etc. This Phase would be performed with the involvement and approval of the appropriate regulatory agencies.

MONTH-TO-MONTH

LEASE OF IMPROVED SPACE BETWEEN

THE PORT OF PORTLAND

AND

CASCADE GENERAL, INC.

YARD SPACE

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MONTH-TO-MONTH  
LEASE OF IMPROVED SPACE

THIS LEASE, dated this 14<sup>th</sup> day of November, 1991, is entered into by and between THE PORT OF PORTLAND, a port district of the State of Oregon (hereinafter referred to as "Port"), and CASCADE GENERAL, INC. , a corporation organized under the laws of the State of OREGON (hereinafter referred to as "Lessee"), for lease of certain described Premises located at the Portland Ship Repair Yard, Swan Island ("PSRY").

RECITALS

WHEREAS, the Port desires to lease certain land and/or improvements located at Portland Ship Repair Yard to Lessee, said land and/or improvements being more particularly described below; and

WHEREAS, Lessee is desirous of leasing said land and/or improvements;

NOW, THEREFORE, in consideration of the above declarations, the parties have negotiated the following terms and conditions:

ARTICLE I. - AGREEMENT TO LEASE, DESCRIPTION OF PREMISES

Section 1.1 - Agreement to Lease: The Port hereby leases to Lessee, and Lessee leases from the Port on the terms and conditions stated herein,

the Premises consisting of 63,905 square feet of open yard space in five locations shown on Exhibit No. A, attached hereto and made a part hereof, and any existing Improvements thereon, and appurtenances thereto, (hereinafter referred to as "Premises"). Upon construction or installation of any Improvements, additions, or changes to Improvements in, under, or upon the Premises (collectively "Improvements"), such Improvement(s) shall become a part of the Premises unless otherwise stated herein.

Section 1.2 - Use of Premises:

1.2.1 Lessee may use the Premises only for the following purpose(s): storage of materials, equipment, and supplies used in Lessee's ship repair, ship conversion, ship building, and Portland Ship Repair Yard related industrial fabrication work and parking of Lessee's or Lessee's employee's vehicles. No sandblasting or spray painting shall be permitted on the Premises.

1.2.2 No other use may be made of the Premises without the written approval of the Port, which shall not be unreasonably withheld. Except as a necessary and incidental use in conjunction with the use authorized for the Premises pursuant to Section 1.2.1 above, no use may be made of, on, or from the Premises relating to the handling, storage, disposal, transportation, or discharge of Hazardous Substances as defined in Section 6.3 hereof. Under no circumstances shall any use be made of, or conduct occur on, the Premises which would cause the Premises, or any part thereof, to be deemed a hazardous waste treatment, storage, or

disposal facility requiring a permit, interim status, or any other special authorization under any Environmental Law as defined in Section 6.3 hereof.

1.2.3 The Port shall have the option, but shall not be required to, request the Lessee to provide the Port with a list of all materials and activities which are or foreseeably will occur on the Premises which might constitute an environmental liability. Under no circumstances shall the Port be liable for failure to request or update said list.

1.2.4 In no event shall Lessee store, handle, transport, dispose, or treat any Hazardous Substances on the Premises which are generated by or from cleanup, removal, or remediation operations or activities from third party sources outside PSRY.

1.2.5 In no event shall the Lessee ever permanently or temporarily store the following product categories on the Premises without the Port's prior written approval, except as specifically authorized by federal, state, or local Environmental Law or regulation:

1. PCBs, PCB contaminated materials, and spill residues containing PCBs.
2. Asbestos, asbestos-contaminated materials, and spill residues containing asbestos.
3. Radioactive materials (as defined by state, federal, and local regulations) including but not limited to United States Department of

Transportation (US D.O.T.) classifications, and restrictions as defined in OAR Chapter 333, Division 100-005 (51) or as defined by Oregon Health Division.

4. Explosive materials and flammable solids (US D.O.T. Classification).

5. Poison Gases (Poison A, US D.O.T. classification).

6. Reactive materials (Defined by RCRA characteristic or reactivity).

7. Medical, biological, or infectious waste.

1.2.6 Lessee shall at all times exercise due care in connection with the handling of Hazardous Substances on the Premises and shall not cause or permit Hazardous Substances to be spilled, leaked, disposed of, treated, or otherwise released on the Premises.

1.2.7 Before commencing the use, generation, accumulation, storage, treatment, or other handling of Hazardous Substances on the Premises, Lessee shall provide the Port with copies of all necessary permits, authorizations and notices required by any Environmental Law as described in Section 6.3 herein, with respect to such activities. Lessee shall at all times comply with all Environmental Laws as defined in Section 6.3 herein which are applicable to the Premises or to the Lessee's activities on the Premises.

1.2.8 The Lessee shall not in any manner deface or injure the



Premises or any portion thereof; or overload the asphalt; or commit any nuisance in or about the Premises.

Section 1.3 - Appurtenant Rights:

1.3.1 Lessee, its customers, agents, representatives, suppliers, and invitees and subcontractors authorized to be operating in the yard shall have the nonexclusive right to use the Common Areas, such right to be in common with others to whom the Port has granted or may grant such similar right. The term "Common Areas," as used herein, shall mean the roadways, pedestrian walkways, alleyways, driveways, delivery areas, trash removal areas, and any other areas, except for berth and drydock lay down areas, where such areas have been designated by the Port as areas to be used by tenants of the Port or those having Facility Agreements in common with other tenants and users of the Port.

1.3.2 The Port reserves the following rights with respect to the Common Areas:

1.3.2.1 To establish reasonable rules and regulations for the use of said Common Areas;

1.3.2.2 To use or permit the use of such Common Areas by others to whom the Port may grant or may have granted such rights in such manner as the Port may from time to time so grant;

1.3.2.3 To close all or any portion of the Common Areas to make repairs or changes, to prevent a dedication of the Common Areas or the accrual of any rights to any person or the public, or to discourage unpermitted use of the Common Areas;

1.3.2.4 To construct additional buildings to alter or remove buildings or other improvements in the Common Areas and to change the layout of such common Areas, including the right to add to or subtract from their shape and size.

1.3.2.5 To exercise any of the Port's governmental regulatory powers over the Common Areas.

## ARTICLE II. - TERM

Section 2.1 - Term: This Lease shall commence on September 1, 1991, and continue month to month until terminated by either party upon thirty days' written notice or otherwise terminated under the provisions hereof.

## ARTICLE III. - RENTAL

Section 3.1 - Basic Rent: The Lessee shall pay to the Port as rent the sum of \$3,834.30 per month, in advance, based upon the following: 63,905 square feet of improved yard space at \$.06 per square foot per month.

Section 3.2 - Time and Place of Payments: Payments are due on the first day of each month and delinquent if not paid by the (10th) day of each month. In the event the Lease commences after the first day of a month, the Basic Rent for the first month shall be prorated based on the number of days in the first partial calendar month.

3.2.1 Payment shall be to the Port at The Port of Portland, Post Office Box 5095, Portland, Oregon 97208, or such other place as the Port may designate. All amounts not paid by the Lessee when due shall bear a delinquency charge at the rate of 18% per annum. The delinquency charge on overdue accounts is subject to periodic adjustment to reflect the Port's then current charge for overdue accounts.

Section 3.3 - Acceptance of Late Rent: The Port shall be entitled, at its sole and complete discretion, to either accept or reject a tender payment of Basic Rent or Additional Rent which is not paid when due. In the event the Port elects to accept a tender of payment of rent after the time when such payment was due, the Port may do so without thereby waiving any default based upon the failure of Lessee to make such payment when due and without waiving Lessee's continuing obligation to make such payments when required under the terms of this Lease. Lessee hereby acknowledges that this constitutes a waiver by Lessee of any argument that by accepting a late payment of rent, the Port has waived any default which is based upon such late payment or has waived Lessee's continuing obligation to make such payments when and as required by the terms of this Lease.

#### ARTICLE IV. - LESSEE'S OTHER OBLIGATIONS

Section 4.1 - Construction of Improvements/Alterations: The Lessee shall make no construction, alteration, or changes on or to the Premises without the prior written consent of the Port, which consent shall not be unreasonably withheld. At least thirty days prior to any approved

construction, alteration, or changes upon the Premises or Improvements, Lessee shall submit to the Port architectural and mechanical final plans and specifications, site-use plan, and architectural rendering thereof and shall not commence any construction until it has received the Port's written approval. All plans for construction, alteration, or changes shall be signed by an architect or engineer licensed in the State of Oregon. Should the Port fail to take action concerning the plans and/or specifications submitted to it within thirty days, said plans and/or specifications shall be deemed approved.

4.1.1 No such work shall be undertaken until Lessee has procured and paid for, so far as the same may be required from time to time, all municipal and other governmental permits and authorizations required with respect to the work. Procurement of such permits and authorizations shall be subsequent to Lessee's obtaining Port approval pursuant to Section 4.1.

4.1.2 All work shall be performed in a good and workmanlike manner and, in the case of alterations or additions to existing Improvements, shall be of such quality and type that, when completed, the value and utility of the Improvements which were changed or altered shall be not less than the value and utility of such Improvements immediately before such change or alteration. All work shall be prosecuted with reasonable dispatch.

4.1.3 Thirty days after the completion of any work under this Section 4.1, Lessee shall deliver to the Port complete and fully detailed "AS-BUILT" drawings of the completed Improvements prepared by an architect

licensed in the State of Oregon.

Section 4.2 - Maintenance: The Lessee shall keep and maintain the Premises and Improvements of any kind, which may be erected, installed, or made thereon by the Lessee or the Port, in good and substantial repair and condition and shall promptly make all necessary repairs thereto at Lessee's sole expense. The Lessee shall provide at, the Lessee's expense, proper containers and removal service for trash and garbage and shall keep the Premises free and clear of rubbish, debris, and litter at all times.

Section 4.3 - Taxes: Unless exempt, the Lessee agrees to pay all lawful taxes and assessments which during the term hereof or any extension may become a lien or which may be levied by the state, county, city, or any other tax-levying body upon the Premises or Improvements, upon any taxable interest by Lessee acquired in this Lease, or any taxable possessory right which Lessee may have in or to the Premises or the Improvements thereon by reason of its occupancy thereof, as well as all taxes on all taxable property, real or personal, owned by the Lessee in or about said Premises. Upon making such payments, the Lessee shall give to the Port a copy of the receipts and vouchers showing such payment. The Lessee understands that Port property is exempt from property taxation until leased to a taxable entity. In the event the term of this Lease or any extension thereof shall end after June 30 of any year, the Lessee shall be responsible for payment of property taxes for the entire tax year without proration or, in the event of any change in property tax law, for



any taxes due under such law.

Section 4.4 - Liens: The Lessee agrees to pay, when due, all sums of money that may become due for, any labor, services, materials, supplies, utilities, furnishings, machinery, or equipment which have been furnished or ordered with the Lessee's consent to be furnished to or for the Lessee in, upon, or about the Premises or Improvements, which may be secured by any mechanic's, materialsmen's, or other lien against the Premises or Improvements or the Port's interest therein, and will cause each such lien to be fully discharged and released at the time the performance of any obligation secured by any such lien matures or becomes due, provided that the Lessee may in good faith contest any mechanic's or other liens filed or established, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest, provided that the Port may require the Lessee to procure a payment bond in the amount of the contested lien.

Section 4.5 - Utilities: The Lessee shall promptly pay any charges for telephone, and all other charges for utilities which may be furnished to the Premises or Improvements at the request of or for the benefit of Lessee.

Section 4.6 - Advertisement Signs: Subject to the provisions hereof, the Lessee shall have the right to install or cause to be installed appropriate signs on the Premises to advertise the nature of its

business. The cost for installation and operation of such signs shall be borne by the Lessee. The Lessee shall not erect, install, nor permit to be erected, installed or operated upon the Premises herein any sign or other advertising device without having first obtained the Port's written consent thereto as to size, construction, location, and general appearance. All such installations shall be in accordance with the Portland Ship Repair Yard Signing Standards as adopted by the Port from time to time.

Section 4.7 - Safety Requirements:

4.7.1 The Lessee shall conduct its operations, activities and duties under this Lease in a safe manner, and shall comply with all safety standards imposed by applicable federal, state and local laws and regulations. The Lessee shall require the observance of the foregoing by all subcontractors and all other persons transacting business with or for the Lessee in any way connected with the conduct of the Lessee pursuant to this Lease.

4.7.2 The Lessee shall exercise due and reasonable care and caution to prevent and control fire on the Premises and to that end shall provide and maintain such fire suppression and other fire protection equipment as may be required pursuant to applicable governmental laws, ordinances, statutes and codes for the purpose of protecting the Improvements adequately and restricting the spread of any fire from the Premises to any property adjacent to the Premises.

Section 4.8 - Access to Premises: Except as provided in Section 4.8.1, the Port shall at all times during ordinary business hours have the right to enter upon the Premises and Improvements for the purposes of: (1) inspecting the same; (2) confirming the performance by Lessee of its obligations under this Lease; (3) doing any other act which the Port may be obligated or have the right to perform under this Lease, or reasonably related thereto; and (4) for any other lawful purpose. Such inspections shall be made only at a mutually agreeable time to all parties except in cases of emergency or pursuant to Section 4.8.1.

4.8.1 Environmental Inspection: The Port reserves the right to inspect the Lessee's and Lessee's subtenants' management of Hazardous Substances, as defined in Section 6.3, on the Premises at any time and from time to time without notice to the Lessee or subtenant. If the Port at any time during the term of this Lease or any extension thereof reasonably believes that the Lessee or Lessee's subtenant(s) are managing Hazardous Substances in a manner that may allow contamination of any portion of the Premises, the Port may require the Lessee to furnish to the Port, at the Lessee's sole expense, an environmental audit or an environmental assessment with respect to the matters of concern to the Port. The Port shall have the right to approve the company or individual conducting said audit and the audit procedures, which approval shall not be unreasonably withheld, and shall be given an original copy of the results. Lessee shall cooperate with all such requests.

Section 4.9 - Hazardous Substances Spills and Releases: Lessee shall immediately notify the Port upon becoming aware of: (1) any leak, spill, release or disposal of a Hazardous Substance, as defined in Section 6.3, on, under or adjacent to the Premises or threat of or reasonable suspicion of any of the same; and/or (2) any notice or communication from a governmental agency or any other person directed to the Lessee or any other person relating to such Hazardous Substances on, under, or adjacent to the Premises or any violation of any federal, state, or local laws, regulations, or ordinances with respect to the Premises or activities on the Premises.

4.9.1 In the event of a leak, spill or release of a Hazardous Substance on the Premises or the threat of or reasonable suspicion of the same, Lessee shall immediately undertake all emergency response necessary to contain, clean up and remove the Hazardous Substance and shall undertake within a reasonable time all investigatory, remedial and/or removal action necessary or appropriate to ensure that any contamination by the Hazardous Substances is eliminated. The Port shall have the right to approve all investigatory, remedial and removal procedures and the company(ies) and/or individual(s) conducting said procedures, such approval shall not be unreasonably withheld. Within 30 days following completion of such investigatory, remedial and/or removal action, Lessee shall provide the Port with a certification acceptable to the Port that all such contamination has been eliminated as required by federal, state, or local law or regulation.

ARTICLE V. - PORT OBLIGATIONS AND WARRANTIES

Section 5.1 - Delivery:

5.1.1 Lessee shall have the right to possession of the Premises as of the date of the term hereof. Should the Port be unable to deliver possession of the Premises on the date fixed for commencement of the term, the Lessee shall owe no rent until notice from the Port tendering possession to the Lessee. The Port shall have no liability to the Lessee for delay in delivering possession, nor shall such delay extend the term of this Lease in any manner.

5.1.2 In the event the Port shall permit the Lessee to occupy the Premises prior to the occupancy date herein set forth, such occupancy shall be subject to all the provisions of this Lease.

Section 5.2 - Port's Warranty of Ownership: The Port warrants that it is the owner of the land and has the right to lease said Premises under the terms of this Lease. Subject to the Lessee performing all obligations of this Lease, the Lessee's possession of the Premises will not be disturbed by the Port or anyone lawfully claiming by, through or under the Port and the Port will defend the Lessee's right to quiet enjoyment of the Premises from disturbance by anyone lawfully claiming by, through or under the Port.

Section 5.3 - Condition of Premises: The Port makes no warranties or representations regarding the condition or available lawful uses of the



Premises. The Lessee has inspected and accepts the Premises in an "as is" condition upon taking possession, and the Port shall have no liability to the Lessee for any loss, damage, injury, or costs caused by the condition or available lawful uses of the Premises.

ARTICLE VI. - LIABILITY, INDEMNITY, INSURANCE, DAMAGE AND DESTRUCTION

Section 6.1 - Liability: The Port shall not be liable to the Lessee for damage to person or property resulting from the negligence of a co-tenant or anyone else other than the Port, or for any damage to person or property resulting from any condition of the Premises or other cause, including but not limited to damage by water, not resulting from the negligence of the Port. Lessee understands that the Premises are located within a ship repair yard where large vessels are repaired, sandblasted, and spray painted and such activities may create noise, odors, dusts, paint oversprays and sandblast grit. Lessee acknowledges these risks, assumes the risks for damages caused by such risks, and releases the Port from liability therefore.

Section 6.2 - General Indemnity: The Port shall not in any event be liable for any injury to any person or damage to any property occurring on or about the Premises, unless such injury or damage results from the wilful acts or negligence of the Port. Lessee covenants and agrees to indemnify and hold harmless the Port, its commissioners, directors, officers, agents, and employees from and against any and all actual or

potential liability, claims, demands, damages, expenses, fees (including attorneys', accountants', and paralegal fees), fines, penalties, suits, proceedings, actions, and causes of action (collectively "costs") which may be imposed upon or incurred by the Port due to the acts or omissions of any person or entity excluding only the wilful acts or negligence of the Port, and which: (1) arise from or are in any way connected with Lessee's use, occupation, management or control of the Premises and whether or not occurring on the Premises; or (2) result from any breach, violation, or nonperformance by Lessee of any of its obligations under this Lease.

Section 6.3 - Hazardous Substances Indemnity: In addition to the indemnity provided in Section 6.2 above, Lessee agrees to indemnify, save, and hold harmless the Port from and against all removal, remediation, containment and other costs required to be incurred by Environmental Laws caused by, arising out of, or in connection with, the handling, storage, discharge, transportation, or disposal of Hazardous Substances which Hazardous Substances are on the Premises as a result of Lessee's, or Lessee's sublessees', agents', employees', or invitees', acts or omissions, whether occurring during the term of this Lease. Subject to the preceding limitations, such Costs shall include, but not be limited to: (a) claims of third parties, including governmental agencies, for damages, response costs or other relief; (b) the cost, expense or loss to the Port of any injunctive relief, including preliminary or temporary

injunctive relief, applicable to the Port or the Premises; (c) the expense, including reasonable fees of attorneys, engineers, paralegals and experts, reporting the existence of said Hazardous Substances or contaminants to any agency of the State of Oregon or the United States as required by applicable Environmental Laws; (d) any and all expenses or obligations, including attorneys' and paralegal fees, incurred at, before, and after any trial or appeal therefrom or any administrative proceeding or appeal therefrom whether or not taxable as costs, including, without limitation, reasonable attorneys' and paralegal fees, witness fees (expert and otherwise), deposition costs, copying and telephone charges and other expenses, all of which shall be paid by Lessee promptly after the Port incurs the obligations to pay such amounts. Such damages, costs, liabilities and expenses shall include such as are claimed to be owed by any regulating and administering agency. As used in Article VI, the word "Premises" shall be deemed to include the soil and water table thereof. As used herein, "Hazardous Substances" shall be interpreted in the broadest sense to include any substances, materials, wastes, pollutants, or contaminants that, because of their quantity, concentration, or physical, chemical, or infectious characteristics, may cause or threaten a present or potential hazard to human health or the environment when improperly generated, used, stored, handled, treated, discharged, disposed of, or released and which are regulated by Environmental Laws. "Hazardous Substances" shall include but not be limited to any and all substances, materials, wastes, pollutants, or contaminants as defined or designated as hazardous, toxic, radioactive, dangerous, or any other similar term in or under any of the Environmental Laws, and shall specifically include

asbestos and asbestos-containing materials, petroleum or petroleum products, including crude oil or any fraction thereof, and urea formaldehyde. As used herein, "Environmental Laws" shall be interpreted in the broadest sense to include any and all lawful federal, state, and local statutes, regulations, rules, and ordinances now or hereafter in effect, as may be amended from time to time, governing Hazardous Substances or relating to the protection of human health or the environment, including but not limited to, the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. §6901 et. seq.); the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 U.S.C. §9601, et. seq.); the Federal Water Pollution Control Act/Clean Water Act (33 U.S.C. §1257 et. seq.); the Toxic Substances Control Act (15 U.S.C. §2601, et. seq.); Superfund Amendment and Reauthorization Act of 1986 (SARA) (P.L. 99-499. October 17, 1986); the Safe Drinking Water Act (42 U.S.C. 300 et. seq.); the Solid Waste Disposal Act (42 U.S.C. §3251, et. seq.); the Clean Water Act (33 U.S.C. §1251, et. seq.); the Clean Air Act (42 U.S.C. §7401 et. seq.); the Fomral Fungicide and Rodenticide Act/Pesticide Act (7 U.S.C. §13 et. seq.); the Oregon Revised Statues relating to community information on hazardous waste reduction (ORS 453.307 et seq.); toxics use reduction and hazardous waste reduction (ORS 465.003 et. seq.); environmental cleanup of hazardous substances, hazardous wastes, and oil contamination (ORS 465.200 et. seq.); treatment, storage, and disposal of hazardous waste and PCBs (ORS 266.005 et. seq.); notice of environmental hazards (ORS 466.360 et. seq.); use of PCBs (ORS 466.505 et. seq.); spill response and cleanup of hazardous materials and

oil (ORS 466.605 et. seq.); underground storage tanks (ORS 466.705 et. seq.); penalties for noncompliance (ORS 466.880 et. seq.); water pollution control (ORS 468.691 et. seq.); oil spills (ORS 466.880 et. seq.); asbestos abatement (ORS 468.875 et. seq.); any similar or equivalent laws; and any implementing laws, regulations, rules, and ordinances.

6.3.1 Promptly upon written notice from the Port or from any governmental entity, if required by the environmental laws, the Lessee shall remove from the Premises (including without limitation the soil or water table thereof) all Hazardous Substances placed on the Premises by Lessee, Lessee's sublessees, agents, employees or invitees and shall restore the Premises to clean, safe, good, and serviceable condition. Any such cleanup shall be in conformance with all applicable governmental rules and regulations.

Section 6.4 - Duty to Defend: Lessee shall, at its sole expense, defend any and all actions, suits, and proceedings relating to matters covered by the indemnity set forth in Sections 6.2 and 6.3 which may be brought against the Port or in which the Port may be impleaded, and shall satisfy, pay, and discharge any and all judgments, orders, and decrees that may be entered against the Port in any such action or proceeding.

Section 6.5 - Insurance:

6.5.1 The Lessee shall maintain an occurrence form commercial general and automobile liability insurance policy or policies for the protection of Lessee and the Port, its commissioners, directors, officers,



servants, and employees, insuring the Lessee and the Port against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and occurring on or in any way related to the Premises or occasioned by reason of the operations of the Lessee on or from the Premises with insurance of not less than (\$5,000,000) combined single limit.

6.5.2 Lessee shall maintain in force Workers' Compensation insurance, including coverage for Employer's Liability and, if applicable, The Longshoremen's and Harbor Workers' Compensation Act.

6.5.3 All insurance shall name the Port, its commissioners, officers, and employees as additional insureds with the stipulation that this insurance, as to the interest of the Port only therein, shall not be invalidated by any act or neglect or breach of contract by the Lessee.

6.5.4 The Lessee shall furnish to the Port a certificate(s) of insurance evidencing the date, amount, and type of insurance that has been procured pursuant to this Lease. All policies of insurance shall remain in full force during the term hereof and shall provide for not less than 30 (thirty) days written notice to the Port and the Lessee before such policies may be revised, nonrenewed, or cancelled. Upon request, the Lessee shall provide the Port with a copy or copies of any insurance policy provided pursuant to this Lease.

6.5.5 The Port shall have the right to review the coverage and limits of insurance required herein from time to time. In the event the Port reasonably determines that such limits should be modified, the Port will provide 30 days notice to the Lessee of such determination and the Lessee shall,

if the coverage is expanded and/or limits are increased, modify its coverage to comply with the new limits and provide the Port with an updated certificate.

Section 6.6 - Waiver of Subrogation: The Port and the Lessee agree that each forfeits any right of action that it may later acquire against the other of the parties to the Lease for loss or damage to its property, or to property in which it may have an interest, to the extent that such loss is covered by the provision of the Lessee's property damage policy or policies.

#### ARTICLE VII. - TERMINATION

Section 7.1 - Termination by the Port: The Port shall be entitled to terminate this Lease as provided herein and as otherwise provided by law.

Section 7.2 - Termination by Lessee: The Lessee shall be entitled to terminate this Lease as provided herein and as otherwise provided by law.

Section 7.3 - Duties on Termination: Upon termination of the Lease for any reason, the Lessee shall deliver all keys to the Port and surrender the Premises and Improvements in good condition. Alterations including but not limited to electrical systems, constructed by the Lessee with permission from the Port shall not be removed, unless the terms of permission for the alteration so require, but shall be restored to the

original condition. Depreciation and wear from ordinary use for the purpose for which the Premises were let need not be restored, but all repair for which the Lessee is responsible shall be completed to the latest practical date prior to such surrender.

Section 7.4 - Title to Improvements: Subject to the provisions of Section 7.5, upon termination of this Lease by the passage of time or for any reason, the Port shall have the option to either require removal of any or all Improvements constructed by the Lessee, pursuant to Section 4.1, within 90 days after the expiration of the Lease at the Lessee's expense or shall have the option to take title to any or all such structures, installations, and Improvements.

Section 7.5 - Fixtures:

7.5.1 Upon termination of this Lease for any reason, any or all fixtures placed upon the Premises during the Lease Term other than the Lessee's trade fixtures, shall, at the Port's option, become the property of the Port. Movable furniture, decorations, floor covering (other than hard surface bonded or adhesively fixed flooring), curtains, blinds, furnishings, equipment, and trade fixtures shall remain the property of the Lessee if placed on the Premises by the Lessee. At or before the termination of this Lease, Lessee, at its expense, shall remove from the Premises any or all of Lessee's fixtures or personal property which the Port has required Lessee to remove under the terms of this Lease, and shall repair any damage to the Premises resulting from the installation or

removal of such fixtures or personal property. Any items of Lessee's fixtures or personal property which remain on the Premises after the termination of this Lease in violation of this Section 7.5 may, at the option of the Port, be deemed abandoned. The Port shall have the option, in its sole discretion, of (a) retaining any or all of such abandoned property without any requirement to account to Lessee therefor, or (b) removing and disposing of any or all of such abandoned property and recovering the cost thereof, plus interest from the date of expenditure at the Port's then current interest rate, from Lessee upon demand.

7.5.2 The time for removal of any property or fixtures which the Lessee is required to remove from the Premises upon termination shall be as follows: (1) on or before the date the Lease terminates as provided herein; or (2) within 30 days after notice from the Port requiring such removal where the property to be removed is a fixture which the Lessee is not required to remove except after such notice by the Port, and such date would fall after the date on which the Lessee would be required to remove other property.

Section 7.6 - Environmental Audit: The Port may, at or near the expiration of this Lease by time or other termination require the Lessee to conduct, at its cost, an environmental audit of the Premises acceptable to the Port to determine if any environmental contamination as defined by then-applicable Environmental Law exists on the Premises. The audit will follow the general procedures outlined in Exhibit B attached hereto. The Port shall have the right to approve the audit procedures and the company or individual conducting said audit and shall be given an original copy of

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the results. Lessee shall provide to the Port a supplemental update report as of the last day of the Lease Term. The Lessee shall promptly remedy any contamination revealed by such audit in accordance with, and to the extent required by, the then applicable Environmental Law prior to the expiration of the Lease Term. Lessee, upon termination of the Lease for any reason other than expiration of time, shall conduct the environmental audit as required by this Section. The Port, if necessary, will grant Lessee a Permit of Entry for such purpose. In the event the Lessee fails to promptly remedy the contamination, the Port shall have the right to remedy such contamination and charge the Lessee all such costs. The Lessee agrees to pay to Port such costs within 30 days after receipt of invoice from the Port, such right to be in addition to any other remedy available to the Port as provided herein, at law, or by equity.

7.6.1 If the Lessee does not conduct said audit as required herein, the Port may, at its sole option, complete said audit at the Lessee's expense. Until said audit and any remedial actions as required to restore the Premises to an acceptable condition are completed, the Lessee shall not be released from any liability for such costs.

#### ARTICLE VIII. - DEFAULT

Section 8.1 - Events of Default: The following shall be events of default:

8.1.1 Default in Rent: Failure of the Lessee to pay any rent or other charge as provided herein within 10 days after it is due.



8.1.2 Default in Other Covenants: Failure of the Lessee to comply with any term or condition or fulfill any obligation of the Lease (other than the payment of rent or other charges) within 30 days after written notice by the Port specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the 30 day period, this provision shall be complied with if the Lessee begins correction of the default within the 30 day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

8.1.3 Insolvency: To the extent permitted by the United States Bankruptcy Code, insolvency of the Lessee; an assignment by the Lessee for the benefit of creditors; the filing by the Lessee of a voluntary petition in bankruptcy; an adjudication that the Lessee is bankrupt or the appointment of a receiver of the properties of the Lessee and the receiver is not discharged within 30 days; the filing of an involuntary petition of bankruptcy and failure of the Lessee to secure a dismissal of the petition within 30 (thirty) days after filing; attachment of or the levying of execution on the leasehold interest and failure of the Lessee to secure discharge of the attachment or release of the levy of execution within 30 days.

Section 8.2 - Remedies on Default:

8.2.1 In the event of a default under the provisions of Section 8.1, the Port at its option may terminate the Lease and at any time may exercise any other remedies available under law or equity for such default. Any notice to terminate may be given before or within the grace

period for default and may be included in a notice of failure of compliance. No termination of this Lease pursuant to this Section 8.2 shall relieve Lessee of its liabilities and obligations under this Lease, and any damages shall survive any such termination.

8.2.2 If Lessee fails to perform any of its obligations under this Lease, the Port, without waiving any other remedies for such failure, may (but shall not be obligated to) perform such obligation for the account and at the expense of the Lessee, without notice in a case of emergency, and in any other case if such failure continues for 15 days after written notice from the Port specifying the nature of the failure. As used herein, "emergency" shall mean any activity, cause or effect under the control or direction of the Lessee, its employees, agents, invitees, guests, or subcontractors involving the health, safety or general welfare of persons or property. The Port shall not be liable to Lessee for any claim for damage resulting from any such action by the Port. Lessee agrees to reimburse the Port upon demand for any expenses incurred by Lessor pursuant to this Lease together with interest thereon from the date of payment at the Port's then current interest rate.

8.2.3 Suit(s) or action(s) for the recovery of the rents and other amounts and damages, or for the recovery of possession may be brought by landlord, from time to time, at landlord's election, and nothing in this Lease will be deemed to require landlord to await the date on which the Lease Term expires. Each right and remedy in this Lease will be cumulative and will be in addition to every other right or remedy in this Lease or existing at law or in equity or by statute or otherwise,

including, without limitation, suits for injunctive relief and specific performance. The exercise or beginning of the exercise by landlord of any such rights or remedies will not preclude the simultaneous or later exercise by landlord of any other such rights or remedies. All such rights and remedies are nonexclusive.

#### ARTICLE IX. - GENERAL PROVISIONS

##### Section 9.1 - Assignment and Sublease:

9.1.1 This Lease is personal to the Lessor and the Lessee. Except as provided herein, no part of the Premises nor any interest in this Lease may be assigned, mortgaged, or subleased, nor may a right of use of any portion of the Premises be conveyed or conferred on any third person by any other means, without the prior written consent of the Port, which consent shall not be unreasonably withheld. Any assignment or attempted assignment without the Port's prior written consent shall be void. This provision shall apply to all transfers by operation of law.

9.1.2 Consent in one instance shall not prevent this provision from applying to a subsequent instance.

9.1.3 Other than the subleases for which the Port has given written consent concurrently with this Lease, in determining whether to consent to sublease, the Port may consider any factor, including the following factors: financial ability; business experience; intended use.

Section 9.2 - Nonwaiver: Waiver by either party of strict performance of any provision of this Lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision. All waivers shall be in writing. The Port's acceptance of a late payment of rent does not waive any preceding or subsequent default other than the failure to pay the particular sum accepted.

Section 9.3 - Attorney's Fees: If suit or action is instituted in connection with any controversy arising out of this Lease, the prevailing party shall be entitled to recover in addition to costs such sum as the court may adjudge reasonable as attorney fees, or in the event of appeal as allowed by the appellate court.

Section 9.4 - Law of Oregon: This Lease shall be governed by the laws of the State of Oregon. If a court of competent jurisdiction declares this Lease to be a public contract under ORS Chapter 279, then the parties agree that the contract provisions required by ORS Chapter 279 to be included in public contracts are hereby incorporated by reference and shall become a part of this Lease as if fully set forth herein.

Section 9.5 - Adherence to Law: The Lessee shall adhere to all applicable federal, state, and local laws, rules, regulations, and ordinances, including but not limited to (1) laws governing its relationship with its employees, including but not limited to laws, rules,

regulations, and policies concerning Worker's Compensation, and minimum and prevailing wage requirements; (2) laws, rules, regulations and policies relative to occupational safety and health, (3) all federal, state, regional and local laws, regulations and ordinances protecting the environment, and (4) all laws and regulations regarding the handling and disposal of Hazardous Substances.

9.5.1 Lessee shall not use or allow the use of the Premises or any part thereof for any unlawful purpose or in violation of any certificate of occupancy, any certificate of compliance, or of any other certificate, law, statute, ordinance, or regulation covering or affecting the use of the Premises or any part thereof. Lessee shall not permit any act to be done or any condition to exist on the Premises or any part thereof which may be hazardous, which may constitute a nuisance, or which may void or make voidable any policy of insurance in force with respect to the Premises.

9.5.2 The Lessee shall promptly provide to the Port copies of all notices or other communications between the Lessee and any governmental entity which relate to the Lessee's noncompliance or alleged noncompliance with any law, ordinance, regulation, condition, or other applicable requirement lawfully imposed by any agency, governmental body, or quasi-governmental body having jurisdiction over the Lessee's use of the Premises.

9.5.3 Lessee shall obtain, and promptly advise the Port of receipt of all federal, state, or local governmental approvals or permits required by law or regulation for any activity or construction that Lessee



may undertake on the Premises. Lessee shall provide the Port with copies of all such approvals and permits received by Lessee.

Section 9.6 - Time of Essence: Time is of the essence of each and every covenant and condition of this Lease.

Section 9.7 - Warranty of Authority: The individuals executing this agreement warrant that they have full authority to execute this Lease on behalf of the entity for whom they are acting herein.

Section 9.8 - Headings: The article and section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provisions of this Lease.

Section 9.9 - Consent of Port:

9.9.1 Subject to the provisions of Section 9.1, whenever consent, approval or direction by the Port is required under the terms contained herein, it shall not be unreasonably withheld or delayed and all such consent, approval, or direction shall be received in writing from an authorized representative of The Port of Portland.

Section 9.10 - Notices: All notices required under this Lease shall be deemed to be properly served if served personally or sent by certified mail to the last address previously furnished by the parties hereto. Until hereafter changed by the parties by notice in writing, notices shall be sent to the Port at The Port of Portland, Post Office Box 3529,

Portland, Oregon 97208, or served personally at 5555 N. Channel Ave., Bldg. 50, Portland, Oregon, 97217, and to the Lessee at 5555 N. Channel Ave., Bldg. 71, Portland, Oregon 97217. Date of Service of such notice is date such notice is personally served or deposited in a post office of the United States Post Office Department, postage prepaid.

Section 9.11 - Modification: Any modification of the Lease shall be mutually agreed upon and reduced to writing and shall not be effective until signed by the parties hereto.

Section 9.12 - No Benefit to Third Parties: The Port and the Lessee are the only parties to this Lease and as such are the only parties entitled to enforce its terms. Nothing in this Lease gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.

Section 9.13 - Admittance: The Port shall not be liable for the consequences of admitting by pass-key or refusing to admit to said Premises the Lessee or any of the Lessee's agents or employees or other persons claiming the right of admittance.

Section 9.14 - Regulations: The Port may, from time to time, adopt and enforce reasonable rules and regulations with respect to the use of said Premises, and Lessee agrees to observe and obey such rules and regulations.

Section 9.15 - Partial Invalidity: If any provision of this Lease or the application thereof to any person or circumstance is at any time or to any extent, held to be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

Section 9.16 - Survival: All agreements (including, but not limited to, indemnification agreements) set forth in this Lease, the full performance of which are not required prior to the expiration or earlier termination of this Lease, shall survive the expiration or earlier termination of this Lease and be fully enforceable thereafter.

Section 9.17 - Entire Agreement: It is understood and agreed that this instrument contains the entire Agreement between the parties hereto. It is further understood and agreed by the Lessee that the Port and the Port's agents have made no representations or promises with respect to this Agreement or the making or entry into this Agreement, except as in this Agreement expressly set forth, and that no claim or liability or cause for termination shall be asserted by the lessee against the Port for, and the Port shall not be liable by reason of, the breach of any representations or promises not expressly stated in this Agreement, any other oral agreement with the Port being expressly waived by the Lessee.

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CG-YS

IN WITNESS WHEREOF, the parties hereto have subscribed their names.

LESSEE

By Ernest Drowley

By Loy Kahler

THE PORT OF PORTLAND

By Richard M. Moore  
EXECUTIVE DIRECTOR

By \_\_\_\_\_

APPROVED AS TO LEGAL SUFFICIENCY

Paul C. Brown  
Counsel for The Port of Portland

CG-YS  
09/91

CG-YS

IN WITNESS WHEREOF, the parties hereto have subscribed their names.

LESSEE

By

Ernest Brawley

By

Loy Kaller

THE PORT OF PORTLAND

By

Richard Moore

EXECUTIVE DIRECTOR

By

[Signature]

APPROVED AS TO LEGAL SUFFICIENCY

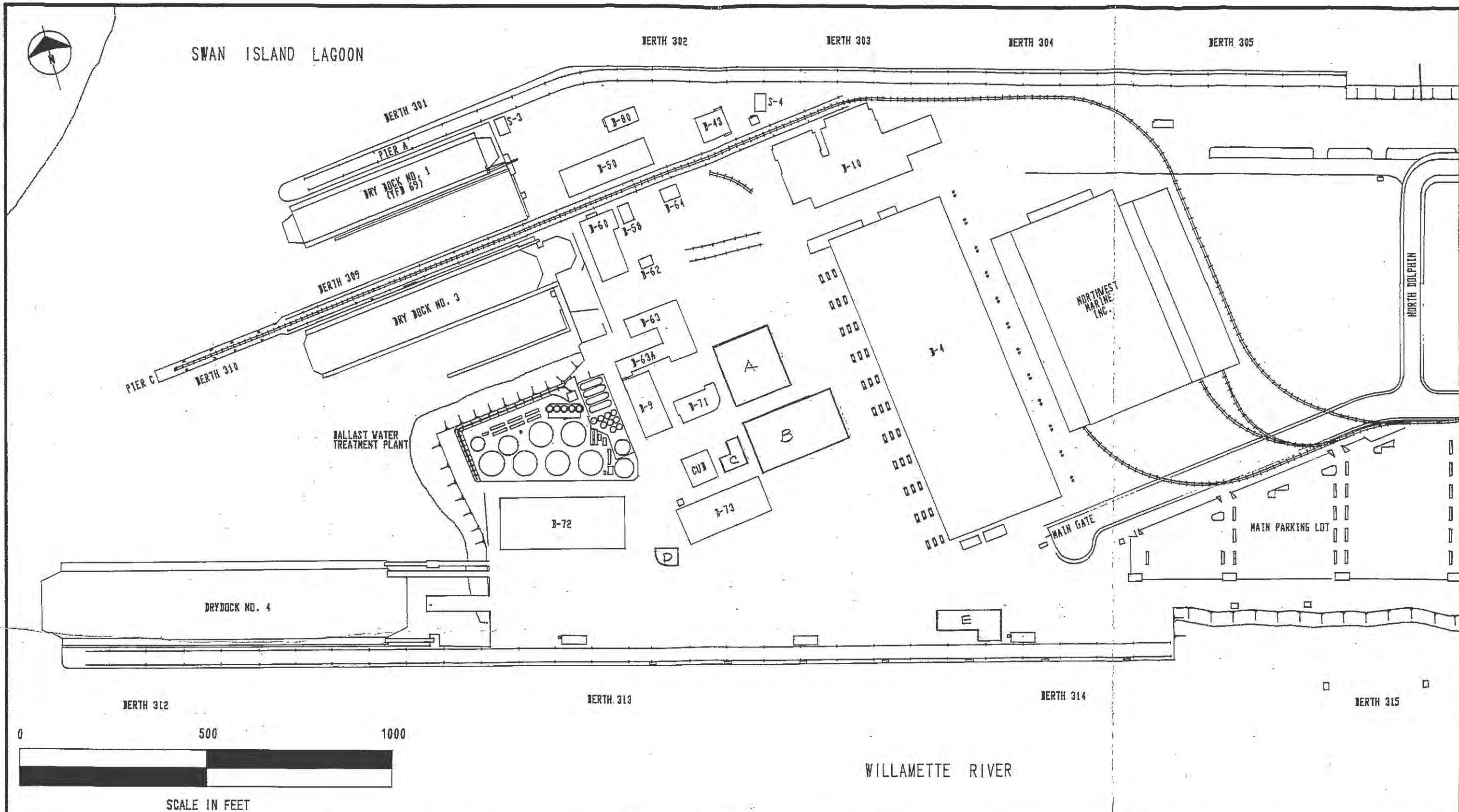
Paul C. Brown

Counsel for The Port of Portland

CG-YS  
09/91

CG-YS





AREA	SIZE IN SQUARE FEET
A.	28,800
B.	15,000
C.	5,855

AREA	SIZE IN SQUARE FEET
D.	3,000
E.	11,250

EXHIBIT A

12-21-90

YARDPLAN.CAD 1/1

EXHIBIT B  
ENVIRONMENTAL SURVEY

The following sets of activities are to be included in a comprehensive review of the conditions and operations conducted at a subject property to determine areas of environmental concern.

Phase 1 - SITE CHARACTERIZATION

The purpose of this Phase is to identify potential areas of environmental concern. This is to be accomplished through the following tasks.

- 1) Regulatory File Review, including, but not limited to:
  - o Department of Environmental Quality (DEQ)
  - o Environmental Protection Agency (EPA)
  - o Oregon State Fire Marshal (OSFM)
- 2) On-Site Reconnaissance to establish current conditions and determine the need for additional sampling, including, but not limited to:
  - o Hazardous materials/waste management areas
  - o General Facility maintenance/housekeeping
  - o Air pollution sources and control equipment
  - o Water pollution sources and control equipment
  - o Solid waste management areas
  - o Electrical and hydraulic equipment
  - o Underground storage tanks
  - o Presence of asbestos containing materials
- 3) Sampling in areas which exhibit the possibility of soil and/or groundwater contamination. This would also include sampling to establish background levels for reference purposes. This portion of the investigation may be deferred until Phase 2, if the findings of activities 1) and 2) above indicate a high likelihood of contamination of soil and/or groundwater.
- 4) Reporting, including documentation of all information, evidence, and results developed during the Site Characterization activities 2), and 3) above. The report will also include recommendations for future actions or further work needed.

## ENVIRONMENTAL SURVEY

(Continued)

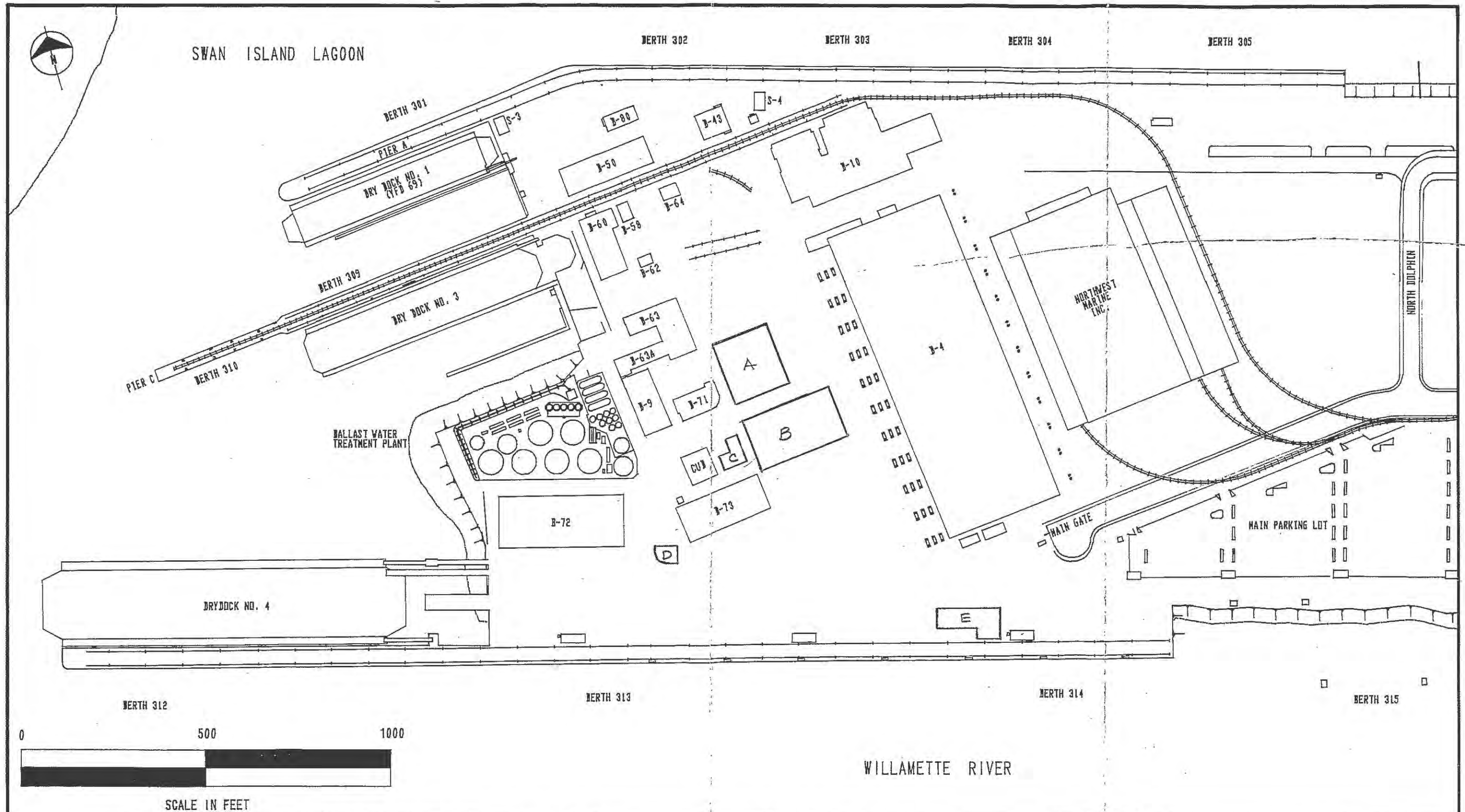
### Phase 2 - SITE INVESTIGATION

If the results of the Phase 1, Site Characterization indicate the likelihood of environmental contamination at or from the site, additional work may be recommended. The purpose of the Phase 2, Site Investigation is to quantify the concerns identified in Phase 1. This can be accomplished through sampling for physical and chemical analyses to determine the extent and level of contamination. During this phase, environmental impacts and financial exposure risks may also be evaluated. The results of the Phase 2, Site Investigation will be used for development of recommendations for additional work, if necessary.

### Phase 3 - SITE REMEDIATION

If the outcome of the Phase 2, Site Investigation indicates that contamination of the site requires remedial action, Phase 3 would be implemented. The tasks associated with this Phase would include, but not be limited to, removal of hazardous materials or waste on the site, addressing site contamination through various engineering/treatment options, monitoring, etc. This Phase would be performed with the involvement and approval of the appropriate regulatory agencies.

Cascade 9



AREA		SIZE IN SQUARE FEET	AREA		SIZE IN SQUARE FEET	EXHIBIT A	
A.		28,800	D.		3,000	12-21-90	YARDPLAN.CAD 1/1
B.		15,000	E.		11,250		
C.		5,855					

LEASE OF IMPROVED SPACE BETWEEN

THE PORT OF PORTLAND

AND

CASCADE GENERAL, INC.



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LONG TERM  
LEASE OF IMPROVED SPACE

THIS LEASE, dated as of the 9th day of September 1993, is entered into by and between THE PORT OF PORTLAND, a port district of the State of Oregon (hereinafter referred to as "Port"), and CASCADE GENERAL, INC., a corporation organized under the laws of the State of Oregon (hereinafter referred to as "Lessee"), for lease of certain described Premises located at the Portland Ship Repair Yard, Swan Island ("PSRY").

RECITALS

On May 4, 1981, Northwest Marine Iron Works (NWM) and the Port of Portland entered into Port Contract No. 81-053 ("Prior Lease"), a long term lease of shop space in a surface preparation and paint building commonly known as Building 73, Bay 1.

Subsequent to the Prior Lease, Southwest Marine, Inc., a California corporation, purchased all the outstanding shares of NWM's stock and later merged NWM into Southwest Marine, Inc. NWM's corporate name was changed to Southwest Marine, Inc., d/b/a Northwest Marine ("SWM").

On March 14, 1993, SWM terminated its operations as a ship repair contractor at the Portland Ship Repair Yard and began liquidating its assets in Portland.

SWM has concluded negotiations with Cascade General, Inc. for the sale of SWM's trade fixtures in Building 73, Bay 1 and desires to terminate the Prior Lease with the Port.

Cascade General, Inc. desires to enter into a new lease for Building 73, Bay 1 and has agreed to assume all of SWM's responsibilities and obligations under the Prior Lease.

The Port is willing to terminate the Prior Lease for Building 73, Bay 1 and to enter into a new lease with Cascade General, Inc. on the terms and conditions set out herein.

## ARTICLE I. - AGREEMENT TO LEASE, DESCRIPTION OF PREMISES

Section 1.1 - Description of Premises: The Port leases to Lessee, and Lessee leases from the Port, on the terms and conditions stated herein, the Premises consisting of Bay 1 of Building 73, a surface preparation and paint building, consisting of approximately 12,100 square feet of shop space on approximately .38 acres of land (hereinafter referred to as "Premises") as shown on Exhibit No. A, attached hereto and made a part hereof. The Premises shall include those improvements constructed or installed by the Port or SWM under the Prior Lease except the painting and blasting equipment. Upon construction or installation of additional improvements approved by the Port as provided in this Lease, in, under or upon the Premises (collectively "Improvements"), such Improvement(s) shall become a part of the Premises unless otherwise stated herein.

### Section 1.2 - Use of Premises:

1.2.1 Lessee shall use the Premises only for the following purpose(s): Surface preparation and application of coatings for ship repair and industrial fabrication projects. Paints, thinners, and other flammable liquids stored on the Premises shall not exceed quantities needed for normal daily operations and shall be stored in Factory Mutual Research Corporation (FMRC) approved flammable liquids metal cabinets. Lessee shall protect any and all Port-owned equipment from paint overspray.

1.2.2 No other use may be made of the Premises without the prior written approval of the Port. Except as a necessary and incidental use in conjunction with the use authorized for the Premises pursuant to Section 1.2.1 above, no use may be made of, on, or from the Premises relating to the handling, storage, disposal, transportation, or discharge of Hazardous Substances as defined in Section 6.3 below. Under no circumstances shall any use be made of, or conduct occur on, the Premises which would cause the Premises, or any part thereof, or the Building, Improvements of the facility of which they are a part, to be deemed a hazardous waste treatment, storage, or disposal facility requiring a permit, interim status, or



any other special authorization under any Environmental Law as defined in Section 6.3 below.

1.2.3 The Port shall have the option, but shall not be required to request the Lessee to provide the Port with a list of all materials and activities which are occurring or foreseeably will occur on the Premises which might constitute an environmental liability. Under no circumstances shall the Port be liable for failure to request or update said list.

1.2.4 In no event shall Lessee store, handle, transport, dispose, or treat any Hazardous Substances on the Premises which are generated by or from cleanup, removal, or remediation operations or activities from third party sources outside PSRY.

1.2.5 In no event shall the Lessee ever permanently or temporarily store the following product categories without the Port's prior written approval, except as specifically authorized by federal, state, or local Environmental Law or regulation:

1. PCBs, PCB contaminated materials, and spill residues containing PCBs.
2. Asbestos, asbestos-contaminated materials, and spill residues containing asbestos.
3. Radioactive materials (as defined by state, federal, and local regulations including but not limited to United States Department of Transportation (US D.O.T.) classifications, and restrictions as defined in OAR Chapter 333, Division 100-005 (51) or as defined by Oregon Health Division.
4. Explosive materials and flammable solids (US D.O.T. Classification).
5. Poison Gases (Poison A, US D.O.T. classification).
6. Reactive materials (Defined by RCRA characteristic or reactivity).
7. Medical, biological, or infectious waste.

1.2.6 Lessee shall at all times exercise due care in connection with the handling of Hazardous Substances on the Premises and shall not cause or permit Hazardous Substances to be spilled, leaked, disposed of, treated, or otherwise released on the Premises.

1.2.7 Before commencing the use, generation, accumulation, storage, treatment, or other handling of Hazardous Substances on the Premises, Lessee shall provide

the Port with copies of all necessary permits, authorizations and notices required by any Environmental Law as described in Section 6.3 herein, with respect to such activities. Lessee shall at all times comply with all Environmental Laws as defined in Section 6.3 herein which are applicable to the Premises or to the Lessee's activities on the Premises.

1.2.8. Lessee shall not in any manner deface or injure the Premises or any portion thereof; or overload the floors; or permit anything to be done upon the Premises which would cause an increase in the Fire Insurance rating to the building; or commit any nuisance in or about the Premises; or to use or permit the use of the Premises for lodging or sleeping purposes or for any illegal purposes. Lessee shall comply at Lessee's own cost and expense with all orders, notices, regulations, or requirements of any municipality, state, or other governmental authority respecting the use of said Premises.

#### Section 1.3 - Appurtenant Rights:

1.3.1 Lessee, its customers, agents, representatives, suppliers, and invitees and subcontractors authorized to be operating in the yard shall have the non-exclusive right to use the Common Areas, such right to be in common with others to whom the Port has granted or may grant such similar right. The term "Common Areas," as used herein, shall mean the roadways, pedestrian walkways, alleyways, driveways, delivery areas, trash removal areas, and any other areas, except for berth and drydock lay down areas, where such areas have been designated by the Port as areas to be used by tenants of the Port or those having Facility Agreements in common with other tenants and users of the Port, provided that nothing stated herein shall prohibit the Port from barring from Port property any person or entity which fails to comply with applicable laws, ordinances, rules and regulations including those adopted by the Port Commission and those adopted by the Executive Director or the Executive Director's designee.

1.3.2 In addition to any other rights granted by law, the Port and its Executive Director, or the Executive Director's designee, reserve the following specific rights with

respect to the Common Areas:

1.3.2.1 To establish reasonable rules and regulations for the use of said Common Areas;

1.3.2.2 To use or permit the use of such Common Areas by others to whom the Port may grant or may have granted such rights in such manner as the Port may from time to time so grant;

1.3.2.3 To close all or any portion of the Common Areas to make repairs or changes, to prevent a dedication of the Common Areas or the accrual of any rights to any person or the public, or to discourage unpermitted use of the Common Areas;

1.3.2.4 To construct additional buildings or to alter or remove buildings or other improvements in the Common Areas and to change the layout of such Common Areas, including the right to add to or subtract from their shape and size or to change their location;

1.3.2.5 To exercise any of the Port's governmental powers over the Common Areas.

## ARTICLE II. - TERM

Section 2.1 - Term: The initial term of this Lease shall commence on October, 1 1993 and shall continue through June 14, 2001 ("Initial Term") unless the Lease is earlier terminated under the provisions herein, or unless the term is extended by exercise of the option(s) provided in Section 2.2 ("Renewal Term"). As used herein, Lease Year shall mean the period from October 1 through September 30 of each year.

Section 2.2 - Renewal Options: If Lessee is not in default upon the Exercise Date or at the conclusion of the applicable expiring term, Lessee shall have two options to renew this Lease on the same terms and conditions except for the establishment of Land and Building Rent as provided herein. The renewal options shall be for a period of three years each and shall be exercised by notice in writing not less than 90 days nor more 180 days before the last

day of the expiring term. The day on which the written notice is given as provided herein shall be the "Exercise Date." Once exercised or lapsed, an option shall be extinguished. Failure to exercise any option in the manner and within the period provided in this Section 2.2 shall extinguish said option and any and all future options.

### ARTICLE III. - RENTAL

Section 3.1 - Land and Building Rent: From the commencement date of this Lease through September 30, 1995 ("Initial Period"), Lessee shall pay, in advance to the Port, monthly Land Rent equal to \$541.50 and monthly Building Rent equal to \$2760.31. The Land and Building Rent shall be established pursuant to Section 3.2 for each three year period following the Initial Period, and for each Renewal Term.

Section 3.2 - Adjustment of Land and Building Rent: On the first day of the third Lease Year, on the first day on the sixth Lease Year, and on the first day of each Renewal Term (each, an "Adjustment Date") the Land and Building Rent each shall each be adjusted for the ensuing period (each, an "Adjustment Period"). The adjustments shall be such as to make the Land and Building Rent equal to the Fair Market Rental Value of the land and building respectively as of the Adjustment Date, as defined in Section 3.3, but subject to Section 3.2.1.

3.2.1 In no event shall the Land Rent be less than the monthly Land Rent in effect on the last day of the Lease Year expiring immediately prior to the Adjustment Period. In no event shall the Building Rent be less than the monthly Building Rent in effect on the last day of the Lease Year expiring prior to the Adjustment Period.

3.2.2 Prior to an Adjustment Date, the Port shall notify the Lessee, pursuant to Section 9.10, of its determination of the Fair Market Rental Value of the land and Fair Market Rental Value of the building for the Adjustment Period. The Land and Building Rent as stated in such notice shall commence on the first day of the applicable Adjustment Period, unless



Lessee requests arbitration by written notice to the Port within 10 business days of the Port's notice of its determination of Fair Market Rental Value, in which event the Fair Market Rental Value for the applicable period shall be determined in accordance with Section 3.3. The failure of Lessee to give any notice hereunder shall be deemed an acceptance by Lessee of the Port's determination of the Fair Market Rental Value of the land and building. If the Port fails to notify the Lessee of its determination, in accordance with this Section, then Fair Market Rental Value shall be determined in accordance with the arbitration process described in Section 3.3.

Section 3.3 - Arbitration: In the event the parties cannot agree upon the Fair Market Rental Value of the Land or Building or both, or in the event the Port fails to give notice to Lessee of its determination of Fair Market Rental Value prior to the Adjustment Date, then such value for the ensuing period shall be determined by one arbitrator. Within forty-five days after notice by either party to the other party requesting arbitration, or after the Adjustment Date if no notice is given, the parties shall select one arbitrator agreeable to each party. During the arbitration period, Lessee shall pay the current rental rate in effect under this Lease. The arbitrator shall be an MAI appraiser licensed in the State of Oregon who shall, for purposes of arbitration proceedings, apply the rules of mandatory arbitration as adopted by the State of Oregon, Multnomah County Circuit Court and in effect at the time of the arbitration. If the parties fail to select an arbitrator as required above, on application by either party, the arbitrator shall be appointed by the presiding judge of the Circuit Court of the State of Oregon, County of Multnomah.

3.3.1 Within twenty days after the selection of an arbitrator as required herein, the parties shall submit to the arbitrator a written statement of its position on the Fair Market Rental Value or the land or building or both, as applicable, calculated in accordance with this Lease. The arbitrator shall, after a hearing on the merits, determine within sixty days after his or her appointment, the Fair Market Rental Value.



3.3.2 As used in this Article, "Fair Market Rental Value" shall mean the highest rental in terms of money which a property will bring in an open and competitive rental market under all conditions requisite to a fair rental transaction, the buyer and seller acting prudently and knowledgeably; assuming: (1) the price is not affected by undue stimulus; (2) the value is based on the use of the Premises contemplated by the parties.

3.3.4 The values determined by the arbitrator shall be binding upon the parties, effective and retroactive to the first day of the rental period under arbitration. Any adjustment between the rental amount paid during arbitration, and the amount determined to be owed, shall be made on the rental due date following the arbitration decision. Each party shall bear the expense of the appointed arbitrator/appraiser and all other expenses of conducting the arbitration equally. Each party shall bear its own expenses for witnesses, depositions, and attorneys, if deemed necessary. The arbitrator's decision and award shall be governed by Oregon law and procedure, except to the extent that those statutes are superseded by the Federal Arbitration Act (9 U.S.C. chapter 1, et. seq.).

Section 3.4 - Time and Place of Payments: Lessee shall pay the Port the Land and Building Rent which shall be due and payable on the first day of each month, said payments to be delinquent if not paid when due. In the event the Lease commences after the first day of a month, the Land and Building Rent for the first month shall be prorated based on the number of days in the month being prorated.

3.4.1 Payment shall be to the Port at The Port of Portland, Post Office Box 5095, Portland, Oregon 97208, or such other place as the Port may designate. All amounts not paid by the Lessee when due shall bear a delinquency charge at the rate of 18% per annum. The delinquency charge on overdue accounts is subject to periodic adjustment to reflect the Port's then current rate on overdue accounts.

Section 3.5 - Acceptance of Late Rent: The Port shall be entitled, at its sole and complete discretion, to either accept or reject a tender of payment of Land and Building Rent which is not paid when due. In the event the Port elects to accept a tender of payment of Land and Building Rent after the time when such payment is due, the Port may do so without thereby waiving any default based upon the failure of Lessee to make such payment when due and without waiving Lessee's continuing obligation to make such payments when required under the terms of this Lease. Lessee hereby acknowledges that this constitutes a waiver by Lessee of any argument that by accepting a late payment of Land and Building Rent, the Port has waived any default which is based upon such late payment or has waived Lessee's continuing obligation to make such payments when and as required by the terms of this Lease.

#### ARTICLE IV. - LESSEE'S OTHER OBLIGATIONS

Section 4.1 - Construction of Improvements/Alterations: The Lessee shall make no construction, alteration, or changes on or to the Premises without the prior written consent of the Port. At least thirty days prior to any approved construction, alteration, or changes upon the Premises or Improvements, Lessee shall submit to the Port architectural and mechanical final plans and specifications, site-use plan, and architectural rendering thereof and shall not commence any construction until it has received the Port's written approval.

4.1.1 No such work shall be undertaken until Lessee has procured and paid for, so far as the same may be required from time to time, all municipal and other governmental permits and authorizations required with respect to the work. Procurement of such permits and authorizations shall be subsequent to Lessee's obtaining Port approval pursuant to Section 4.1.

4.1.2 All work shall be performed in a good and workmanlike manner, in conformance to all laws and regulations, and, in the case of alterations or additions to existing Improvements, shall be of such quality and type that, when completed, the value and utility of

the Improvements which were changed or altered shall be not less than the value and utility of such Improvements immediately before such change or alteration. All work shall be prosecuted with reasonable dispatch.

4.1.3 Thirty days after the completion of any work under this Section 4.1, Lessee shall deliver to the Port complete and fully detailed "AS-BUILT" drawings of the completed Improvements.

Section 4.2 - Maintenance: Except for the Port maintenance responsibilities provided in Section 5.1 herein, the Lessee shall keep and maintain the Premises and Improvements of any kind, which may be erected, installed, or made thereon by the Lessee or the Port, in good and substantial repair and condition including the exterior condition thereof and shall promptly make all necessary repairs thereto at Lessee's sole expense. Lessee's obligation to keep and maintain the Premises and Improvements in good and substantial repair and condition shall include maintenance and repair of any Improvements or fixtures constructed or installed by SWM or its predecessor during the Prior Lease. Lessee's obligation shall include, but not be limited to , full responsibility for making the repairs to the Premises described on Exhibit B attached hereto. All repairs shall be subject to the Port's approval and shall be completed prior to the termination of this Lease.

4.2.1 The Lessee shall provide at, the Lessee's expense, proper containers and removal service for trash and garbage and shall keep the Premises free and clear of rubbish, debris, and litter at all times.

Section 4.3 - Taxes: Unless exempt, the Lessee agrees to pay all lawful taxes and assessments which during the term hereof or any extension may become a lien or which may be levied by the state, county, city, or any other tax-levying body upon the Premises or Improvements, upon any taxable interest by Lessee acquired in this Lease, or any taxable possessory right which Lessee may have in or to the Premises or the Improvements thereon by

reason or its occupancy thereof, as well as all taxes on all taxable property, real or personal, owned by the Lessee in or about said Premises. Upon making such payments, the Lessee shall give to the Port a copy of the receipts and vouchers showing such payment. The Lessee understands that Port property is exempt from property taxation until leased to a taxable entity. In the event the term of this Lease or any extension thereof shall end after June 30 of any year, the Lessee shall be responsible for payment of property taxes for the entire tax year without proration or, in the event of any change in property tax law, for any taxes due under such law.

Section 4.4 - Liens: The Lessee agrees to pay, when due, all sums of money that may become due for, or purporting to be for, any labor, services, materials, supplies, utilities, furnishings, machinery, or equipment which have been furnished or ordered with the Lessee's consent to be furnished to or for the Lessee in, upon, or about the Premises or Improvements, which may be secured by any mechanic's, materials men's, or other lien against the Premises or Improvements or the Port's interest therein, and will cause each such lien to be fully discharged and released at the time the performance of any obligation secured by any such lien matures or becomes due, provided that the Lessee may in good faith contest any mechanics or other liens filed or established, and in such event may permit the items so contested to remain undischarged and unsatisfied during the period of such contest, provided that the Port may require the Lessee to procure a payment bond in the amount of the contested lien.

Section 4.5 - Utilities: The Lessee shall promptly pay any charges for telephone, and all other charges for utilities which may be furnished to the Premises or Improvements at the request of or for the benefit of Lessee, except for electric operations and service, compressed air service, and water and sewer service which shall be provided by the Port and paid for by Lessee at the rates set forth in the then-current PSRY Price Schedule.

In no event shall the Lessee overload the electrical circuits from which the Lessee obtains current.



Section 4.6 - Advertisement Signs: Subject to the provisions hereof, the Lessee shall have the right to install or cause to be installed appropriate signs on the Premises to advertise the nature of its business. The cost for installation and operation of such signs shall be borne by the Lessee. The Lessee shall not erect, install, nor permit to be erected, installed or operated upon the Premises herein any sign or other advertising device without having first obtained the Port's written consent thereto which shall not be unreasonably withheld, as to size, construction, location, and general appearance. All such installations shall be in accordance with the Portland Ship Repair Yard Signing Standards as adopted by the Port from time to time.

Section 4.7 - Safety Requirements:

4.7.1 The Lessee shall conduct its operations, activities and duties under this Lease in a safe manner, and shall comply with all safety standards imposed by applicable federal, state and local laws and regulations. The Lessee shall require the observance of the foregoing by all subcontractors and all other persons transacting business with or for the Lessee in any way connected with the conduct of the Lessee pursuant to this Lease.

4.7.2 The Lessee shall exercise due and reasonable care and caution to prevent and control fire on the Premises and to that end shall provide and maintain such fire suppression and other fire protection equipment as may be required pursuant to applicable governmental laws, ordinances, statutes and codes for the purpose of protecting the Improvements adequately and restricting the spread of any fire from the Premises to any property adjacent to the Premises.

Section 4.8 - Access to Premises: Except as provided in Section 4.8.1, the Port shall at all times during ordinary business hours have the right to enter upon the Premises and Improvements for the purposes of: (1) inspecting the same; (2) confirming the performance by Lessee of its obligations under this Lease; (3) doing any other act which the Port may be



obligated or have the right to perform under this Lease, or reasonably related thereto; and (4) for any other lawful purpose. Such inspections shall be made only at a mutually agreeable time to all parties except in cases of emergency or pursuant to Section 4.8.1.

4.8.1 Environmental Inspection: The Port reserves the right to inspect the Lessee's and Lessee's subtenants' management of Hazardous Substances, as defined in Section 6.3, on the Premises at any time and from time to time without notice to the Lessee or subtenant. If the Port at any time during the term of this Lease or any extension thereof has reason to believe that the Lessee or Lessee's subtenant(s) are managing Hazardous Substances in a manner that may allow contamination of any portion of the Premises, the Port may require the Lessee to furnish to the Port, at the Lessee's sole expense, an environmental audit or an environmental assessment with respect to the matters of concern to the Port. The Port shall have the right to approve the company or individual conducting said audit and the audit procedures and shall be given an original copy of the results. Lessee shall cooperate with all such requests.

Section 4.9 - Hazardous Substances Spills and Releases: Lessee shall immediately notify the Port upon becoming aware of: (1) any leak, spill, release or disposal of a Hazardous Substance, as defined in Section 6.3, on, under or adjacent to the Premises or threat of or reasonable suspicion of any of the same; and/or (2) any notice or communication from a governmental agency or any other person directed to the Lessee or any other person relating to such Hazardous Substances on, under, or adjacent to the Premises or any violation of any federal, state, or local laws, regulations, or ordinances with respect to the Premises or activities on the Premises.

4.9.1 In the event of a leak, spill or release of a Hazardous Substance on the Premises or the threat of or reasonable suspicion of the same, Lessee shall immediately undertake all emergency response necessary to contain, clean up and remove the Hazardous Substance and shall undertake within a reasonable time all investigatory, remedial and/or removal action necessary or appropriate to ensure that any contamination by the Hazardous

Substances is eliminated. The Port shall have the right to approve all investigatory, remedial and removal procedures and the company(ies) and/or individual(s) conducting said procedures. Within thirty days following completion of such investigatory, remedial and/or removal action, Lessee shall provide the Port with a certification acceptable to the Port that all such contamination has been eliminated as required by federal, state, or local law or regulations.

#### ARTICLE V. - PORT OBLIGATIONS AND WARRANTIES

Section 5.1 - Maintenance: Except for Lessee's obligations to repair damage caused by its acts or failure to act on the Premises and Lessee's obligations to indemnify the Port for damage pursuant to Section 6.2, the Port shall be responsible for maintenance of the roof areas of the Premises, and maintenance of the exterior utility systems to the service connection points inside the Premises. Any and all maintenance and repair work not specifically described herein as the responsibility of the Port shall be the responsibility of the Lessee.

#### Section 5.2 - Delivery:

5.2.1 Lessee shall have the right to possession of the Premises as of the commencement of the term hereof. Should the Port be unable to deliver possession of the Premises on the date fixed for commencement of the term, the Lessee shall owe no rent until notice from the Port tendering possession to the Lessee. The Port shall have no liability to the Lessee for delay in delivering possession, nor shall such delay extend the term of this Lease in any manner.

5.2.2 In the event the Port shall permit the Lessee to occupy the Premises prior to the occupancy date herein set forth, such occupancy shall be subject to all the provisions of this Lease.

Section 5.3 - Port's Warranty of Ownership: The Port warrants that it is the owner of

the Premises and has the right to lease said Premises under the terms of this Lease. Subject to the Lessee performing all obligations of this Lease, the Lessee's possession of the Premises will not be disturbed by the Port or anyone lawfully claiming by, through or under the Port and the Port will defend the Lessee's right to quiet enjoyment of the Premises from disturbance by anyone lawfully claiming by, through or under the Port.

Section 5.4 - Condition of Premises: The Port makes no warranties or representations regarding the condition or available lawful uses of the Premises. The Lessee has inspected and accepts the Premises in an "as is" condition upon taking possession, and the Port shall have no liability to the Lessee for any damage or injury caused by the condition of the Premises.

#### ARTICLE VI. - LIABILITY, INDEMNITY, INSURANCE, DAMAGE AND DESTRUCTION

Section 6.1 - Liability: The Port shall not be liable to the Lessee for damage to person or property resulting from the negligence of a co-tenant or anyone else other than the Port, or for any damage to person or property resulting from any condition of the Premises or other cause, including but not limited to damage by water, not resulting from the negligence of the Port. Lessee understands that the Premises are located within a ship repair yard where large vessels are repaired, sandblasted, and spray painted and such activities may create noise, odors, dusts, paint oversprays and sandblast grit. Lessee acknowledges these risks, assumes the risks for damages caused by such risks, and releases the Port from liability therefore.

Section 6.2 - General Indemnity: Lessee covenants and agrees to indemnify and hold harmless the Port, its commissioners, directors, officers, agents, and employees from and against any and all actual or potential liability, claims, demands, damages, expenses, fees (including attorneys', accountants', and paralegal fees), fines, penalties, suits, proceedings,

actions, and causes of action (collectively "Costs") which may be imposed upon or incurred by the Port due to the acts or omissions of any person or entity whatsoever (excluding only the willful acts or gross negligence of the Port), and which: (1) arise from or are in any way connected with Lessee's use, occupation, management or control of the Premises whether or not due to Lessee's act or omission and whether or not occurring on the Premises; or (2) result from any breach, violation, or nonperformance by Lessee of any of its obligations under this Lease.

Section 6.3 - Hazardous Substances Indemnity: In addition to the indemnity provided in Section 6.2 above, Lessee agrees to indemnify, hold harmless, and defend the Port from and against all Costs (as defined below) incurred by the Port or assessed against the Port under Environmental Laws (as defined below), which Costs arise out of, or are in connection with, the actual or alleged use, generation, treatment, handling, storage, discharge, transportation, or disposal of Hazardous Substances (as defined below), including any actual or alleged spill, leak or other release, whether prior to the commencement date of this Lease or thereafter. As used in this Section 6.3:

(a) "Costs" shall include, but not be limited to: (i) all claims of third parties, including governmental agencies, for damages, response costs, or other relief; (ii) the cost, expense or loss to the Port of and injunctive relief, including preliminary or temporary injunctive relief, applicable to the Port or the Premises; (iii) all expenses of evaluation, testing, analysis relating to Hazardous Substances, including fees of attorneys, engineers, consultants, paralegals and experts; (iv) all expenses of reporting the existence of Hazardous Substances to any agency of the State of Oregon or the United States as required by applicable Environmental Laws; (v) any and all expenses or obligations, including attorneys' and paralegal fees, incurred at, before, and after any trial or appeal therefrom or any administrative proceeding or appeal therefrom whether or not taxable as costs, including, without limitation, attorneys' and paralegal fees, witness fees (expert and otherwise),



deposition costs, copying and telephone charges and other expenses; and (vi) any damages, costs, liabilities and expenses which are claimed to be owed by any federal or state regulating and administering agency.

(b) "Environmental Laws" shall be interpreted in the broadest sense to include any and all federal, state, and local statutes, regulations, rules, and ordinances now or hereafter in effect, as the same may be amended from time to time, which govern Hazardous Substances or relating to the protection of human health, safety or the environment, including but not limited to, the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. Ch. 6901 et seq.); the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 U.S.C. Ch. 9601, et seq.); the Toxic Substances Control Act (15 U.S.C. Ch. 2601, et seq.); Superfund Amendment and Reauthorization Act of 1986 (SARA) (P.L. 99-499, October 17, 1986); the Solid Waste Disposal Act (42 U.S.C. Ch. 3251, et seq.); the Federal Insecticide, Fungicide and Rodenticide Act/Pesticide Act (7 U.S.C. Ch. 13 et seq.); the Safe Drinking Water Act (44 U.S.C. Ch. 300 (f) et seq.); the Clean Air Act (42 U.S.C. Ch. 7401 et seq.); the Federal Water Pollution Control Act/Clean Water Act (33 U.S.C. Ch. 1251 et seq.); the Oil Pollution Control Act of 1990 (33 U.S.C. Ch. 2761 et seq.); the Oregon Revised Statutes relating to community information on hazardous waste reduction (ORS 453.307 et seq.); toxic use reduction and hazardous waste reduction (ORS 465.003 et seq.); environmental cleanup of hazardous substances, hazardous wastes, and oil contamination (ORS 465.200 et seq.); notice of environmental hazards (ORS 466.360 et seq.); use of PCBs (ORS 466.505 et seq.); spill response and cleanup of hazardous materials and oil (ORS 466.605 et seq.); underground storage tanks (ORS 466.705 et seq.); penalties for noncompliance (ORS 466.880 et seq.); water pollution control (ORS 468.691 et seq.); oil spills (ORS 468.780 et seq.); asbestos abatement (ORS 468.875 et seq.); any similar or equivalent laws; and any implementing laws, regulations, rules, and ordinances.

(c) "Hazardous Substances" shall be interpreted in the broadest sense to include any substances, materials, wastes, pollutants, oils, or regulated substances, or contaminants as are



defined or designed as hazardous, toxic, radioactive, dangerous, or any other similar term in or under any of the Environmental Laws, and shall specifically include asbestos and asbestos-containing materials, petroleum products, including crude oil or any fraction thereof, and urea formaldehyde, and any other substance that, because of its quantity, concentration, or physical, chemical, or infectious characteristics, may cause or threaten a present or potential hazard to human health or the environment when improperly generated, used, stored, handled, treated, discharged, disposed of, or released.

Promptly upon written notice from the Port or from any governmental entity, Lessee shall remove from the Premises (including without limitation the soil or water table thereof), at its own cost and expense, all Hazardous Substances, whether in existence prior to the commencement date of this Lease or thereafter, and shall restore the Premises to clean, safe, good, and serviceable condition. Any such cleanup shall be in conformance with all applicable governmental rules and regulations. Any costs incurred by or assessed against the Port shall be paid by Lessee promptly after the Port incurs the obligation to pay such amounts or determines that an assessment is duly owing and so notifies the Lessee. As used in this Paragraph, "Premises" shall be deemed to include the soil and water table thereof.

Section 6.4 - Duty to Defend: Lessee shall, at its sole expense, defend any and all actions, suits, and proceedings relating to matters covered by the indemnity set forth in Sections 6.2 and 6.3 which may be brought against the Port or in which the Port may impleaded, and shall satisfy, pay, and discharge any and all judgments, orders, and decrees that may be entered against the Port in any such action or proceeding.

Section 6.5 - Insurance:

6.5.1 The Lessee shall maintain an occurrence form commercial general

liability insurance policy or policies including a fire legal liability endorsement for the protection of Lessee and the Port, its commissioners, directors, officers, servants, and employees, insuring the Lessee and the Port against liability for damages because of personal injury, bodily injury, death, or damage to property, including loss of use thereof, and occurring on or in any way related to the Premises or occasioned by reason of the operations of the Lessee on or from the Premises with insurance of not less than \$5,000,000 combined single limit.

6.5.2 Lessee shall maintain in force Workers' Compensation insurance, including coverage for Employer's Liability and, if applicable, The Longshoremen's and Harbor Workers' Compensation Act.

6.5.3 Lessee shall maintain automobile liability insurance covering owned, nonowned, and hired automobiles, with minimum limits of \$1,000,000 for injury, death, or property damage.

6.5.4 All insurance shall name the Port, its commissioners, officers, and employees as additional insureds with the stipulation that this insurance, as to the interest of the Port only therein, shall not be invalidated by any act or neglect or breach of contract by Lessee.

6.5.5 The Lessee shall furnish to the Port a certificate(s) of insurance evidencing the date, amount, and type of insurance that has been procured pursuant to this Lease. All policies of insurance shall remain in full force during the term hereof and shall provide for not less than 30 (thirty) days written notice to the Port and the Lessee before such policies may be revised, non renewed, or canceled. Upon request, the Lessee shall provide the Port with a copy or copies of any insurance policy provided pursuant to this Lease.

6.5.6 The Port shall have the right to review the coverage and limits of insurance required herein from time to time. In the event the Port determines that such limits should be modified, the Port will provide 30 days notice to the Lessee of such determination and the Lessee shall, if the coverage is expanded and/or limits are increased, modify its

coverage to comply with the new limits and provide the Port with an updated certificate.

Section 6.6 - Damage or Destruction of Premises:

6.6.1 If the Premises or any Improvements thereon are totally or partially damaged or destroyed by fire or other casualty, Lessee shall immediately notify the Port except as otherwise provided in this Lease. At the Port's option (1) the Lessee shall promptly repair, rebuild, or restore (collectively "Restore" or "Restoration") the property damaged or destroyed, at Lessee's expense, to substantially the same condition and character as immediately before the damage or destruction, or (2) the Lease shall terminate. If the Port opts to require restoration, such damage or destruction shall not terminate this Lease or abate rent. If existing laws do not permit Restoration, either party may terminate this Lease immediately by giving written notice to the other party. Any Restoration shall comply with all provisions of this Lease, including but not limited to, Section 4.1. In the event of Restoration, Lessee shall be entitled to any insurance proceeds payable from policies purchased by Lessee except that in the event the Lease is terminated as provided herein, the Port shall be entitled to the insurance proceeds.

6.6.2 If the damage or destruction described in Section 6.4.1 occurs during the last two years of the Initial Term, or during the last year of any Renewal Term thereof, and further if the damage or destruction which occurs during said period is such that the cost of Restoration of the property damaged or destroyed exceeds 50 percent of the fair market value of the Premises (excluding the value attributable to the land) immediately prior to such damage or destruction, Lessee shall have the option and shall within sixty days from the damage or destruction, notify the Port in writing whether or not Lessee elects to Restore the Improvements in accordance with Section 6.6.1 above, or to terminate this Lease. Upon giving such notice to terminate, this Lease shall terminate on the date specified in the notice, which date shall not be more than thirty days from the date of the notice, and the Port shall be entitled to the net proceeds of insurance. In the event of such termination, Lessee shall

remove, or pay for the cost of removing, the damaged Improvements or other facilities from the premises and repair any damage to the ground.

Section 6.7 - Waiver of Subrogation: Except as limited in this Section 6.7, the Port and the Lessee agree that each waives any right of action that it may later acquire against the other party to this Lease for loss or damage to that party's property, or to property in which the party may have an interest, to the extent that such loss is covered by any insurance policy or policies and to the extent that proceeds (which proceeds are free and clear of any interest of third parties) are received by the party claiming the loss or damage. This waiver of subrogation shall not extend to any applicable deductible under such policy or policies.

## ARTICLE VII. - TERMINATION

Section 7.1 - Termination by the Port: The Port shall be entitled to terminate this Lease as provided herein and as otherwise provided by law.

Section 7.2 - Termination by Lessee: The Lessee shall be entitled to terminate this Lease, or possession of the Premises under this Lease as provided herein and as otherwise provided by law.

Section 7.3 - Duties on Termination: Upon termination of the Lease, or termination of possession for any reason, the Lessee shall deliver all keys to the Port and surrender the Premises and improvements in good condition. Alterations, including but not limited to electrical systems, constructed by the Lessee with permission from the Port shall not be removed, unless the terms of permission for the alteration so require, but shall be restored to their original condition. Depreciation and wear from ordinary use for the purpose for which the Premises were let need not be restored, but all repairs for which the Lessee is responsible



shall be completed by the latest practical date prior to such surrender.

Section 7.4 - Title to Improvements: Subject to the provisions of Section 7.5, upon termination of this Lease by the passage of time or for any reason, the Port shall have the option to either require removal of any or all Improvements within 90 days after the expiration of the Lease, at the Lessee's expense, or shall have the option to take title to any or all such Improvements.

Section 7.5 - Fixtures:

7.5.1 The existing paint booth and recovery system ("Paint Booth") located within the Premises shall remain the personal property of the Lessee.

7.5.2 Upon termination of this Lease for any reason, any or all fixtures placed upon the Premises before or during the Lease Term, or any extension thereof, including the automatic sprinkler system and the lighting and control systems, but excluding Lessee's Paint Booth and trade fixtures, shall, at the Port's option, become the property of the Port. Movable furniture, decorations, floor covering (other than hard surface bonded or adhesively fixed flooring), curtains, blinds, furnishing and trade fixtures shall remain the property of the Lessee if placed on the Premises by the Lessee. At or before the termination of this Lease, Lessee, at its expense, shall remove from the Premises any or all of Lessee's property required to be removed under the terms of this Lease, and shall repair any damage to the Premises resulting from the installation or removal of such property. Any items of Lessee's property which remain on the Premises after the termination of this Lease in violation of this Section 7.5 may, at the option of the Port, be deemed abandoned. The Port shall have the option, in its sole discretion, of (a) retaining any or all of such abandoned property without any requirement to account to Lessee therefor, or (b) removing and disposing of any or all of such abandoned property and recovering the cost thereof, plus interest from the date of expenditure at the Port's then current interest rate, from Lessee upon demand.



7.5.3 If the Port so elects, Lessee shall remove any or all fixtures which would otherwise remain the property of the Port, including any or all fixtures or Improvements constructed or installed by SWM under the Prior Lease, and shall repair any physical damage resulting from their removal. If Lessee fails to remove such fixtures, the Port may do so and charge the cost to Lessee with interest at 10 percent per annum from the date of expenditure.

7.5.4 The time for removal of any property or fixtures which the Lessee is required to remove from the Premises upon termination shall be as follows: (1) on or before the date the Lease terminates as provided herein; or (2) within 30 days after notice from the Port requiring such removal where the property to be removed is a fixture which the Lessee is not required to remove except after such notice by the Port, and such date would fall after the date on which the Lessee would be required to remove other property.

Section 7.6 - Holding Over: If Lessee shall hold over after the expiration or termination of the Lease Term or any extension thereof, and shall not have agreed in writing with the Port upon the terms and provisions of a new lease prior to such expiration, at the Port's discretion, Lessee shall be deemed a month-to-month holdover tenant or a tenant at sufferance. In the event the Port deems Lessee as a month-to-month holdover tenant, Lessee shall remain bound by all terms, covenants, and agreements hereof, except that: (1) the tenancy shall be one from month to month subject to the previous monthly rent; (2) title to Improvements shall have vested in the Port pursuant to Section 7.4 hereof; (3) the Port shall have the right to adjust the rental payments, charges or use fees upon thirty days' written notice to Lessee; and (4) such month to month tenancy may be terminated at any time by written notice from the Port to Lessee. In the event the Port deems Lessee as a tenant at sufferance, the Port shall be entitled to exercise any rights pursuant thereto. In the event of holdover beyond June 30 of any year, Lessee shall be responsible for payment of property taxes for the entire year without proration.

Section 7.7 - Environmental Audit: The Port may, at or near the expiration of this Lease by time or other termination, require the Lessee to conduct, at its cost, an environmental audit of the Premises acceptable to the Port to determine if any environmental contamination exists on the Premises. The Port shall have the right to approve the audit procedures and the company or individual conducting said audit and shall be given an original copy of the results. Lessee shall provide to the Port a supplemental update report as of the last day of the Lease Term. The Lessee shall promptly remedy any contamination revealed by such audit in accordance with the then applicable regulations prior to the expiration of the Lease Term. Lessee, upon termination of the Lease for any reason other than expiration of time, shall conduct the environmental audit as required by this Section. The Port, if necessary, will grant Lessee a Permit of Entry for such purpose. In the event the Lessee fails to promptly remedy the contamination, the Port shall have the right to remedy such contamination and charge the Lessee all such costs. The Lessee agrees to pay to Port such costs within 30 days after receipt of invoice from the Port, such right to be in addition to any other remedy available to the Port as provided herein, at law, or by equity.

7.7.1 If the Lessee does not conduct said audit as required herein, the Port may, at its sole option, complete said audit at the Lessee's expense. Until said audit and any remedial actions as required to restore the Premises to an acceptable condition are completed, the Lessee shall not be released from any liability for such costs.

## ARTICLE VIII. - DEFAULT

Section 8.1 - Events of Default: The following shall be events of default:

8.1.1 Default in Rent: Failure of the Lessee to pay any rent or other charge as provided herein within 10 days after it is due. Lessee's liability to the Port for default shall survive termination of this Lease.

8.1.2 Default in Other Covenants: Failure of the Lessee to comply with any term or condition or fulfill any obligation of the Lease (other than the payment of rent or other charges) within thirty days after written notice by the Port specifying the nature of the default with reasonable particularity. If the default is of such a nature that it cannot be completely remedied within the thirty day period, this provision shall be complied with if the Lessee begins correction of the default within the thirty day period and thereafter proceeds with reasonable diligence and in good faith to effect the remedy as soon as practicable.

8.1.3 Insolvency: To the extent permitted by the United States Bankruptcy Code, insolvency of the Lessee; an assignment by the Lessee for the benefit of creditors; the filing by the Lessee of a voluntary petition in bankruptcy; an adjudication that the Lessee is bankrupt or the appointment of a receiver of the properties of the Lessee and the receiver is not discharged within thirty days; the filing of an involuntary petition of bankruptcy and failure of the Lessee to secure a dismissal of the petition within thirty days after filing; attachment of or the levying of execution on the leasehold interest and failure of the Lessee to secure discharge of the attachment or release of the levy of execution within ten days.

8.1.4 Failure to Occupy: Failure of the Lessee for 30 days or more to occupy the premises for one or more of the purposes permitted under this Lease unless such failure is excused under other provisions of this Lease.

8.1.5 Correction of Emergency: Lessee fails to immediately commence correction and control of an emergency upon notice from the Port. As used herein, "Emergency" shall mean any activity, cause or effect under the control or direction of Lessee, its employees, agents, invitees, guests, or subcontractors involving the health, safety, or general welfare of persons or property.

#### Section 8.2 - Remedies on Default:

8.2.1 In the event of a default under the provisions of Section 8.1.1, 8.1.2,

8.1.3, 8.1.4, or 8.1.5 the Port at its option may terminate the Lease and at any time may exercise any other remedies available under law or equity for such default. Any notice to terminate may be given before or within the grace period for default and may be included in a notice of failure of compliance. In addition to remedies provided herein, in the event an Emergency, as defined in Section 8.1.5, is not brought under control to the reasonable satisfaction of the Port, the Port may remedy, cure, or bring the Emergency under control without written notice and charge the Lessee all costs associated with such action. No termination of this Lease pursuant to this Section 8.2 shall relieve Lessee of its liabilities and obligations under this Lease, and any damages shall survive any such termination.

8.2.2 Suit(s) or action(s) for the recovery of the rents and other amounts and damages, or for the recovery of possession may be brought by the Port, from time to time, at the Port's election, and nothing in this Lease will be deemed to require the Port to await the date on which the Lease Term expires. Each right and remedy in this Lease will be cumulative and will be in addition to every other right or remedy in this Lease or existing at law or in equity or by statute or otherwise, including, without limitation, suits for injunctive relief and specific performance. The exercise or beginning of the exercise by Port of any such rights or remedies will not preclude the simultaneous or later exercise by Port of any other such rights or remedies. All such rights and remedies are non-exclusive.

## ARTICLE IX. - GENERAL PROVISIONS

### Section 9.1 - Assignment and Sublease:

9.1.1 This Lease is personal to the Port and the Lessee. Except as provided herein, no part of the Premises nor any interest in this Lease may be assigned, mortgaged, or subleased, nor may a right of use of any portion of the Premises be conveyed or conferred on any third person by any other means, without the prior written consent of the Port. Any assignment or attempted assignment without the Port's prior written consent shall be void.



This provision shall apply to all transfers by operation of law. If the Lessee is a corporation, this provision shall apply to any sale of a controlling interest in the stock of the corporation.

9.1.2 Consent in one instance shall not prevent this provision from applying to a subsequent instance.

9.1.3 In determining whether to consent to sublease, the Port may consider any factor, including the following factors: financial ability; business experience; intended use; value of sublease or assignment. The Port may require increased rental to compensate for additional value prior to consent.

Section 9.2 - Non waiver: Waiver by either party of strict performance of any provision of this Lease shall not be a waiver of or prejudice the party's right to require strict performance of the same provision in the future or of any other provision.

Section 9.3 - Attorney's Fees: If suit or action is instituted in connection with any controversy arising out of this Lease, the prevailing party shall be entitled to recover in addition to costs such sum as the court may adjudge reasonable as attorney fees, or in the event of appeal as allowed by the appellate court.

Section 9.4 - Law of Oregon: This Lease shall be governed by the laws of the State of Oregon. To the extent applicable, the contract provisions required by ORS Chapter 279 to be included in public contracts are hereby incorporated by reference and shall become a part of this Lease as if fully set forth herein verbatim.

Section 9.5 - Adherence to Law: The Lessee shall adhere to all applicable Federal, State, and local laws, rules, regulations, and ordinances, including but not limited to (1) laws governing its relationship with its employees, including but not limited to laws, rules, regulations, and policies concerning Worker's Compensation, and minimum and prevailing



wage requirements; (2) laws, rules, regulations and policies relative to occupational safety and health, (3) all federal, state, regional and local laws, and all Environmental Laws; and (4) all ordinances and rules adopted by Port Commission and all rules and regulations adopted by the Port's Executive Director or the Executive Director's designee.

9.5.1 Lessee shall not use or allow the use of the Premises or any part thereof for any unlawful purpose or in violation of any certificate of occupancy, any certificate of compliance, or of any other certificate, law, statute, ordinance, or regulation covering or affecting the use of the Premises or any part thereof. Lessee shall not permit any act to be done or any condition to exist on the Premises or any part thereof which may be hazardous, which may constitute a nuisance, or which may void or make voidable any policy of insurance in force with respect to the Premises.

9.5.2 The Lessee shall promptly provide to the Port copies of all notices or other communications between the Lessee and any governmental entity which relate to the Lessee's noncompliance or alleged noncompliance with any law, ordinance, regulation, condition, or other applicable requirement lawfully imposed by any agency, governmental body, or quasi-governmental body having jurisdiction over the Lessee's use of the Premises.

9.5.3 Lessee shall obtain, and promptly advise the Port of receipt of all federal, state, or local governmental approvals or permits required by law or regulation for any activity or construction that Lessee may undertake on the Premises. Lessee shall provide the Port with copies of all such approvals and permits received by Lessee.

9.5.4 Any subleases approved by the Port as provided in this Lease shall contain a provision substantially similar to the terms of this Section 9.5 or incorporating such terms into the sublease.

Section 9.6 - Time of Essence: Time is of the essence of each and every covenant and condition of this Lease.

Section 9.7 - Warranty of Authority: The individuals executing this Agreement

warrant that they have full authority to execute this Lease on behalf of the entity for whom they are acting herein.

Section 9.8 - Headings: The article and section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provisions of this Lease.

Section 9.9 - Consent of Port:

9.9.1 Subject to the provisions of Section 9.1, whenever consent, approval or direction by the Port is required under the terms contained herein, all such consent, approval, or direction shall be received in writing from an authorized representative of The Port of Portland.

9.9.2 If Lessee requests the Port's consent or approval pursuant to any provision of the Lease and the Port fails or refuses to give such consent, Lessee shall not be entitled to any damages as a result of such failure or refusal, whether or not unreasonable, it being intended the Lessee's sole remedy shall be an action for specific performance or injunction, and that such remedy shall be available only in those cases in which the Port has in fact acted unreasonably and has expressly agreed in writing not unreasonably to withhold its consent or may not unreasonably withhold its consent as a matter of law.

Section 9.10 - Notices: All notices required under this Lease shall be deemed to be properly delivered if delivered personally or sent by certified mail to the last address previously furnished by the parties hereto. Until hereafter changed by the parties by notice in writing, notices shall be sent to the Port at the Port of Portland, Post Office Box 3529, Portland, Oregon 97208, Attn: PSRY Contracts Manager, or delivered personally at 5555 N. Channel Ave., Bldg. 50, Portland, Oregon, 97217, Attn: PSRY Contracts Manager, and to the Lessee at 5555 N. Channel Ave., Bldg. 71, Portland, Oregon, 97217, Attn: President.

Date of delivery of such notice is date such notice is personally delivered or deposited in a post office of the United States Post Office Department, postage prepaid.

Section 9.11 - Modification: Any modification of the Lease shall be mutually agreed upon and reduced to writing and shall not be effective until signed by the parties hereto.

Section 9.12 - No Benefit to Third Parties: The Port and the Lessee are the only parties to this Lease and as such are the only parties entitled to enforce its terms. Nothing in this Lease gives or shall be construed to give or provide any benefit, direct, indirect, or otherwise to third parties unless third persons are expressly described as intended to be beneficiaries of its terms.

Section 9.13 - Admittance: The Port shall not be liable for the consequences of admitting by pass-key or refusing to admit to said Premises the Lessee or any of the Lessee's agents or employees or other persons claiming the right of admittance.

Section 9.14 - Regulations: The Port, its Executive Director, or the Executive Director's designee, may, from time to time, adopt and enforce rules and regulations with respect to the use of the Premises and/or use of the PSRY, which Lessee agrees to observe and obey.

Section 9.15 - Partial Invalidity: If any provision of this Lease or the application thereof to any person or circumstance is at any time or to any extent, held to be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.